

Miscellaneous Appeal No. 08 of 2024

Order No. 02 dated 23.02.2024

Ld. Lawyer for the appellant moves his application for ad interim order of injunction.

There is no caveat as per endorsement of B.C.-I on the application for injunction.

Accordingly, the injunction application is taken up for hearing

Heard the Ld. Lawyer. Perused the memorandum of appeal, certified copy of impugned order, application for interim relief in the form of ad interim injunction, affidavit and documents filed therewith by firstly. Let the documents be kept with the record. Considered.

Issue notice upon the respondents directing them to show cause within fifteen days on receipt thereof as to why the prayer for temporary injunction as made in the instant application should not be allowed.

It appears from application for ad interim order of injunction that the appellant has claimed that he is owner of 'Ka' schedule property which he got by way of deed of gift from his mother. The appellant has further claimed that the respondent is owner of 'Kha' schedule property and he is making construction of a boundary wall in between 'Ka' and 'Kha' schedule properties, which runs from east to west without leaving any statutory space as per the provisions of Panchayat Act, for which the appellant's right of getting natural air and light has been restricted and drainage has been blocked. He has specifically claimed that the construction is illegal construction and inspite of resistance by the appellant, the respondents did not pay any heed. He has intimated the matter to concerned authorities but no action has been taken. He prays for an ad interim order of injunction.

On perusal of title deed, i.e. a deed of gift, it transpires that the mother of appellant executed a deed of gift in favour of appellant in respect of 'Ka' schedule property and by virtue of the said deed he became owner of the 'Ka' schedule property. From L.R.R.O.R. it is apparent that the said property is recorded in his name. It also appears from xerox copies of documents that the appellant has informed the matter in writing to the Block Development Officer of Chanditala-II Block, but he has not produced any document before the court, from which it transpires that the appellant has informed the concerned municipal authority or panchayat regarding any illegal construction being made by the respondents. However, the appellant has informed the panchayat authorities regarding blocking of his drain, through which foul water from 'Ka' schedule property is removed. It appears from the xerox copies of documents submitted on behalf of the appellant that they have made complaint against the respondents regarding blocking of drain but they have not made any allegation before the concerned authority regarding illegal construction as alleged in the application for injunction. From title deed and L.R.R.O.R. it is proved that the appellant is owner and in possession of 'Ka' schedule property. From the xerox copies of documents submitted on behalf of the appellant it is also apparent that the respondents have obstructed the passing of foul water from the house of the appellant through the drain. I am of the view that the appellant has been able to make out a prima facie case for injunction. The balance of convenience and

inconvenience is in favour of granting injunction. Any delay in granting injunction shall cause irreparable loss or injury to the appellant. I am, therefore, inclined to make an ad interim order of injunction at this stage. Hence, the instant application for ad interim order of injunction is hereby allowed ex parte without cost.

The respondents are hereby restrained by ad interim order of injunction from blocking the passing of foul water through the drain from the house of appellant till 22.03.2024.

The appellant to comply with the provisions of Order XXXIX Rule 3(a) & (b) of C.P.C.

Requisites be filed at once.

Dictated & corrected by me.
Sd/- (Sri M.K. Rai)

A.S.J.

Sd/- (Sri M.K. Rai)

Additional Sessions Judge,
1st Court, Serampore