

In the Court of Id. District Judge, South 24-Parganas

Present : Sri Jayanta Koley, (WB00562) District Judge at Alipore

Misc. Appeal No. 118 of 2023

Order no.02, dated 21.04.2023

The case record is put up today on the basis of the petition filed on behalf of the appellant.

The appellant/plaintiff files a petition under section 151 of C.P.Code praying for passing necessary order permitting him to effect necessary correction of the typographical error crept in the application for temporary injunction.

Upon considering the nature of typographical error, as disclosed in the petition, it appears that such error is really minor and unintentional and as such, the appellant/plaintiff is permitted to effect necessary correction in that respect.

It appears that the appellant/plaintiff has already filed the amended application under Order 39 Rule 1 and 2 of C.P.Code after incorporating necessary corrections.

Let the same be kept with the record.

Later order dated 21-04-2023

It appears that the appeal is filed within the period of limitation.

It also appears from the impugned Order that there is no impediment or bar to admit the instant appeal.

Accordingly, let the instant misc. appeal be admitted.

As per report of the Sheristadar no caveat is filed.

The appellant/petitioner intends to move the application for temporary injunction under Order 39 Rule 1 and 2 read with section 151 of the C.P.Code for passing an ad-interim order of injunction upon the same.

Heard the Id. Advocate for the appellant/petitioner.

Perused the application supported by an affidavit as well as copies of documents relied upon.

In short, the case of the appellant/plaintiff is that the predecessor-in-interest of the respondent/defendant no. 1 entered into an agreement for sale of the schedule property in favour of the appellant/plaintiff for a consideration price of Rs. 4,25,000/-, out of which the appellant/plaintiff has already disbursed a sum of Rs. 3,25,000/- in favour of the predecessor-in-interest of the respondent/defendant no.1. It is also the case of the appellant/plaintiff that as there was an embargo to transfer the suit property

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within a period of ten years from the date of gift made by the Governor of West Bengal through R.R. & R. Department in favour of the predecessor-in-interest of the respondent/defendant no. 1, right of construction on the suit property was given to the appellant/plaintiff where he is now in exclusive possession since 2010 by constructing two rooms. It is the specific contention of the appellant/plaintiff that he has requested the respondent/defendant no.1 on several occasions to execute the requisite deed of sale, but the same was delayed on some flimsy pretext. Subsequently, the respondent/defendant no 1, through the respondent/defendant no. 2 who happens to be her son, started threatening the appellant/plaintiff and asked him to vacate the suit property on several occasions and even performed overt act only to disposses the appellant/plaintiff from the suit property, otherwise than in due process of law. As such the appellant/plaintiff filed a petition under section 144 (2) of Cr.P.C. before the Id. Executive Magistrate at Alipore and in view of the order passed in the said proceeding, the overt act on the part of the respondent/defendant no. 1 was stopped for a limited span of time, but subsequently the respondents/defendants have made their intention clear that they are not now desirous to sell the suit property in favour of the appellant/plaintiff and as such asked the appellant/plaintiff to return all the documents relating to the disputed property, in question. In such circumstances, finding no other alternative, the appellant/plaintiff preferred T.S. No. 256 of 2023 before the third Court of the learned Civil Judge (Sr. Divn.) at Alipore seeking necessary reliefs along with a prayer for temporary injunction in ad-interim form which was refused and hence the instant Misc. Appeal.

Upon considering the submission of the learned Advocate for the appellant/plaintiff and regard being had to the copies of documents relied upon, it appears at this stage of the instant appeal that the appellant/plaintiff is in possession of the schedule property and there exists a deed of agreement executed by the respondent/defendant no. 1 in favour of the appellant/plaintiff for sale of the schedule property for which the respondent/defendant no. 1 had already accepted a sum of Rs. 3,25,000/- from the appellant/plaintiff out of total consideration price of Rs. 4,25,000/-. In view of the above, if the respondents/defendants become able to dispossess the appellant/plaintiff from the schedule property, serious prejudice will be caused to him and the same will give rise to multiplicity of proceedings.

Considering as such, I feel that the appellant/plaintiff has become able to make out a good prima facie case and the balance of convenience and inconvenience appears to be tilted in his favour, while exigency is involved therein as well.

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Accordingly, both the parties are hereby directed to maintain status quo in respect of possession over the schedule property as on this date till 17-05-2023.

Issue notice upon the respondents/defendants asking them to show cause by 17-05-2023 as to why the application for ad interim injunction shall not be granted in favour of the appellant/plaintiff.

The appellant/plaintiff is directed to put requisites at once.

The appellant/plaintiff shall comply with the provision u/o 39 rule 3(a) and (b) of Civil Procedure Code.

To date (17-05-2023) for S/R of notice, appearance of the respondents/defendants and for passing further order.

Dictated & corrected by me,
Sd/- Sri Jayanta Koley
District Judge

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(WB00562)