

Serial No.19.
April 25, 2017.
SG

CO 1285 of 2017

Calcutta Landing and Shipping Company Limited
-versus-
Manbasa Devi and others

Mr Jayanta Mitra
Mr Utpal Majumdar
Mr Tilak Bose
Mr Suman Datta
Mr Souvik Majumdar
Mr Abhishek Banerjee
Mr Ajit Pandey

... for the petitioner.

Mr Bimal Chatterjee
Mr Surajeet Nath Mitra
Mr Haradhan Banerjee
Mr M. Chatterjee

... for the opposite party no.1.

The order impugned pertains to a property in Howrah.

According to the petitioner, the petitioner is the lessee under a perpetual lease executed in 1913 in respect of a 5-bigha property and the petitioner has purchased an adjoining plot of land measuring 4 bigha. The petitioner has put up a construction on a part of the 5-bigha leasehold property. The petitioner claims that upon the petitioner obtaining the sanction of a plan for construction upon the remainder of the 5-bigha leasehold land together with the 4-bigha freehold land, the opposite party no.1 instituted a suit in 2015 claiming a declaration and injunction by asserting to be the purchaser of the 5-bigha plot in the year 1955.

It is further submitted on behalf of the petitioner that a previous suit filed by the opposite party no.1 seeking recovery of possession in respect of the 5-bigha plot was dismissed for default in the year 1994 and no steps have been taken for restoration of such suit.

According to the opposite party no.1, no part of the 5-bigha leasehold plot has been constructed upon and the petitioner obtained the sanction of the building plan by making false declarations and furnishing incorrect information to the municipal authorities. The opposite party no.1 suggests that before the municipal authorities, the petitioner claimed to be the owner of the 5-bigha land under a deed of 1919, though the deed that the petitioner now cites to defend the present action is a deed of 1913. The opposite party no.1 also says that for the perceived acts of forgery and fabrication, a criminal complaint has been lodged against the persons in control of the petitioner following which anticipatory bail was sought by the accused and rejected.

It is put on record that upon the opposite party no.1 seeking production of the 1919 deed, an original deed said to be of the year 1919 has been carried to court today on behalf of the petitioner. The opposite party no.1, however, says that the purported original of the 1919 document produced in court today does not tally with the certified copy of the same document obtained by the opposite party no.1.

Though there are concurrent findings by the trial court and the lower appellate court and there may not be any error of jurisdiction on the part of either in passing or affirming the order of injunction, it is, prima facie, difficult to accept that a person asserting ownership from 1955 takes no steps for more than half a century and comes to stop a construction in 2015 upon substantial

expenses being incurred by the plaintiff for obtaining sanction of the plan. Prima facie, it also jars that an injunction has been issued without any condition being imposed.

Ordinarily, when an interlocutory injunction is issued, there is an underlying undertaking given in damages by the person obtaining the injunction that should the action fail or the injunction be ultimately vacated, the party affected by the injunction would be adequately compensated. In the facts of the present case, whatever may be the strength of the prima facie that may have been found in favour of the opposite party no.1, it appears surprising that a 1955 purchaser of a property comes to court in 2015 to assert her rights after having suffered a dismissal for default in a previous suit for recovery of possession of the same plot and is conferred the benefit of an injunction without any conditions being imposed.

The petitioner claims that the mischief may be more at the behest of the attorney who claims to have been appointed by the 88-year-old petitioner.

Since several issues arise, the petition under Article 227 of the Constitution needs to be heard and the same will be heard as a 'Contested Application'. The matter will appear in the combined monthly list of June, 2017.

The order of injunction as affirmed by the order impugned will continue unconditionally for a period of ten days from today till May 5, 2017 but will automatically vacate at 5 pm on May 5, 2017 unless a deposit of Rs.5 crore is made by the opposite party no.1 in the trial court and the same is recorded by the trial court. Upon such deposit being made, the trial court will invest the money by way of a fixed deposit with any nationalised bank and hold it to the credit of the suit. In the event such deposit is not made within the time permitted, the injunction will stand dissolved.

This order is passed on the prima facie satisfaction that the deed of 1913 relied upon by the petitioner grants the petitioner the right to construct upon the 5-bigha leasehold land and does not contain any express clause for forfeiture or the like. As to the quantum directed to be furnished by way of security, the same is based on the rough valuation of the 5-bigha plot in Howrah. On any conservative estimate, the value of the land should not be less than Rs.25 to 30 crore. It is also the case of the petitioner herein that a sum of about Rs.2.5 crore has been expended for obtaining the sanction of the building plan.

At the request of the opposite party no.1, directions are issued for filing affidavits, though they may be unnecessary. Affidavits-in-opposition be filed within a fortnight from date; reply thereto, if any, may be filed within a week thereafter. The non-appearing opposite parties be served copies of the petition and this order and be informed of the adjourned date.

Certified website copies of this order, if applied for, be urgently made available to the parties upon compliance with the requisite formalities.

(Sanjib Banerjee, J.)