

18/11/2020

Item No.5

AB/S DE

Through Video Conference

C. O. 1324 of 2020

Bhutnath Dutta @ Bhutnath Datta

-Vs-

Monmohan Dutta & Anr.

Mr. Arjun Samantafor the Petitioner.

Mr. Partha Pratim Roy ...for the Respondents.

1. The plaintiff in a suit for partition being Title Suit No.14 of 2020 on the file of the learned Civil Judge (Senior Division), 2nd Court at Krishanagar, Nadia is the petitioner in an application under Article 227 of the Constitution of India.

2. The trial court issued an order of temporary injunction pending suit. Thereafter, an application was filed on behalf of the plaintiff alleging that the order of temporary injunction is being violated. The plaintiff sought a further order of temporary injunction invoking Order 39 Rule 2 and Section 151 of the Code of Civil Procedure.

3. It appears that during the hearing of that matter, a point was raked up by the defendants to the effect that the person who attempted to represent the plaintiff was not the duly constituted attorney and no due authorization or power of attorney was produced

before the trial court. The court below held that an order of temporary injunction having already been granted, there was no scope for any further order ; more particularly because the inherent power of the civil court in terms of Section 151 of the Code of Civil Procedure cannot be invoked when the Code contains specific provisions in the form of Order 39 Rule 2 for grant of temporary injunction. The court below, however, noticed that it was not satisfied that there was a duly constituted document of power of attorney and, accordingly, rejected the application for further injunction or for police protection and also for any further action. This is how the plaintiff's application stood dismissed.

4. This revision is instituted invoking Article 227 of the Constitution by the plaintiff.

5. Heard learned Counsel for the revision petitioner and the learned Counsel for the contesting respondents.

6. At the outset, I may record that the learned Counsel for the respondents submits that he has instructions to state that the defendants will not violate the order of temporary injunction already granted and that in view of such order being available there was no requirement to issue further order of temporary injunction or further order of temporary injunction. The learned Counsel appearing for the

revision petitioner/plaintiff pointed out that if such submission on behalf of the defendants is being recorded as an undertaking, that would suffice the ends of justice for the time being ; However that, his client is in possession of the original power of attorney document and is available to be produced even before this Court for perusal.

7. To secure the ends of justice and in terms of Article 227 of the Constitution, all that is required is to record the statement made in the form of undertaking on behalf of the defendants that the order of temporary injunction granted by the Court below will not be flouted and will be obeyed, unless vacated or modified. Hence, that undertaking is recorded.

8. The further issue regarding the so-called power of attorney need not be treated as concluded through the impugned interlocutory order and that the plaintiff will be at liberty to produce such document before the trial court to satisfy that authority about the existence and the vigour of any such document. This petition also contains prayer of the plaintiff for a direction of expeditious disposal of the suit.

9. In the result, recording the undertaking on behalf of the defendants that they will abide by the order of temporary injunction already granted by the trial court and that the said order will continue until vacated or modified, this petition is ordered recording

the request of the plaintiff that the trial court may consider the expeditious disposal of the suit.

10. It is clarified that it will be open to the trial court to consider all issues untrammelled by anything stated in this order and carry forward due adjudication of the suit and also issue interlocutory applications, if any, during its course, if that becomes necessary, in the considered view of the trial court.

The revision petition is, accordingly, disposed of.

(Thottathil B. Radhakrishnan, C.J.)