

10.11.2020
Vacation Bench
Item No.03
(J.K.S & S.M)

(Via Video Conference)

C.O. 1395 of 2020

**Sri Biman Sen & Ors.
-Vs-
Jharna Chowdhury & Ors.**

Mr. Rakheswar Dey Sarkar,
.... For the petitioners.

Mr. Rabilal Moitra,
Mr. Haridas Das,
Mr. Ujjwal Trievedi,
.... For the O.P. Nos. 1-5

Mr. Alak Ghose,
Mr. Dwijadas Chakraborty,
.... For the O.P. Nos. 7-11

The plaintiffs in a suit for declaration of their right, title and interest over the suit property being Title Suit No. 65 of 2018 pending before the learned Civil Judge (Senior Division) at Sealdah District 24-Parganas (South) are the petitioners of the present application under Article 227 of the Constitution of India, which is directed against the order dated October 17, 2020 passed by the learned Additional District Judge, Fast Track Court-II at Sealdah, District 24-Parganas (South) in Miscellaneous Appeal no. 18 of 2018.

The petitioners in the said suit filed an application under Order 39 Rules 1 & 2 of the Code of Civil Procedure.

The learned Trial Judge by the order no.2 dated May 18, 2018 passed an ad interim order of injunction on the said application thereby directing the parties to maintain status quo over the suit property in respect of possession, nature, character and alienation in respect of suit property till June 18, 2018.

The defendant Nos. 1-5 aggrieved by the said order preferred the connected Miscellaneous Appeal.

The Appeal Court below by the order impugned has set aside the order of the learned Trial Judge.

Mr. Moitra, learned Senior Counsel appearing on behalf of the defendant nos. 1-5/opposite parties candidly submits that his clients have no intention to alienate and/or encumber the suit property.

That being the stand of the clients of Mr. Moitra, the defendant nos. 1-6 are restrained by an order of injunction from alienating and/or encumbering and/or creating any third party interest over the suit property till four weeks from date.

The order impugned is modified to the extent indicated above.

The learned Trial Judge is requested to make all endeavour to dispose of the application for injunction within a period of four weeks from the date of communication of this order and to adhere to the

time limit fixed by this order for disposal of the said application, the learned Trial Judge shall not entertain the prayer of the parties for any unnecessary adjournment.

It is made clear that this Court has not gone into the merit of the rival claims of the parties. The above order of injunction is being passed only considering the stand of the said defendants.

The learned Trial Judge therefore shall dispose of the application for injunction in accordance with law without being influenced by any of the observation made by the Appeal Court Below in the order impugned or by the fact that this Court has retained the order of the learned Trial Judge in respect of the alienation of the suit property.

C.O 1395 of 2020 is disposed of with the above terms.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)