

S/L 5
09.02.2021
Court. No. 19
GB

C.O. 177 of 2021

Sahajan Molla & Ors.
Vs.
Sk. Salauddin & Ors.

(Through Video Conference)

*Mr. Susenjit Banik,
Mr. Md. Hasanuz Zaman,
Mr. Suparno Ghosh.*

...for the Petitioners.

*Mr. Sounak Bhattacharya,
Mr. Chandra Nath Sarkar.*

...for the Opposite Party Nos.1 and 2.

This revisional application has been filed by the plaintiffs/respondents in Misc. Appeal No.46 of 2020, being aggrieved by an order dated October 3, 2019, passed by the learned Civil Judge (Senior Division), 2nd Court, Baruipur, District 24 Parganas (South).

Mr. Banik, learned advocate appearing on behalf of the petitioners submits that the learned court below ought not to have passed an ad interim order staying the order of the learned trial Judge. The learned trial Judge had directed the parties to maintain status quo on being satisfied that the plaintiffs had a prima facie case to go to trial and held that unless an order of temporary injunction was passed in the nature of status quo with regard to nature, character and possession and alienation of the suit property, the plaintiffs would suffer irreparable loss and injury.

The learned lower appellate court came to the conclusion that the order should be stayed, as the learned court below did not consider the cardinal principles for granting an injunction. Admittedly, the property is recorded as a 'Danga' and as of now, there is no construction on it as admitted by both the parties. It is also not possible to hold at this stage that the plaintiffs were not in possession of the suit property. Both the parties are claiming title to the property through Chintamoni Bag.

It is the case of the plaintiffs that the defendants are threatening to construct and that is why a commission was prayed for and a commissioner was appointed to look into the aspect as to whether building materials had been stocked on the property by the defendants. Usually when a misc. appeal is pending from an order of injunction, this Court directs the appeal to be heard out expeditiously. It is informed that the appeal has been fixed for hearing on April 23, 2021.

In my view, justice would be sub-served if the Misc. appeal is disposed of within two months from the date. The parties are at liberty to apply before the learned lower appellate court for preponing the date. It is expected that within the said period of two months from today the learned lower appellate court will dispose of the appeal and the application. As Mr. Bhattacharya, learned advocate for the opposite party nos.1 and 2 has shown a picture from which it

appears that there is no construction, on the suit property, further restraint order is necessary at this stage.

The learned lower appellate court will dispose of the appeal and the application in accordance with law and on their merits. No unnecessary adjournments should be granted to either of the parties.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)