

04.03.2021  
Sl. No. 6  
srm

**C.O. No. 269 of 2021**  
**Samim Sultana & Anr.**  
**Vs.**  
**Sreelekha Sinha (Karmakar)**

Mr. Mahemmad Mahmud,  
Ms. Pinki Das

...for the Petitioners.

Mr. Sourav Sen,  
Mr. Arun Bandyopadhyay

...for the Opposite Party.

Affidavit of service is taken on record.

This revisional application has been filed by the defendants in Title Suit No.483 of 2018 pending before the learned Civil Judge (Junior Division), 1<sup>st</sup> Court, Hooghly at Chinsurah. The plaintiff's prayer for ad interim injunction was refused by the learned trial Judge by an order dated November 20, 2018.

Aggrieved by the aforementioned order, the plaintiff preferred Misc. Appeal No.64 of 2018. The said misc. appeal was allowed restraining the defendants from raising any further construction over the suit property described in schedule-A1 and also directed *status quo* to be maintained with regard to the nature and character of the suit property till the disposal of the injunction application.

Aggrieved by the aforementioned order, the defendants have preferred this revisional application.

It is the first contention of the defendants that it is an admitted position that the defendants have purchased a demarcated portion with a building. That the defendants have not encroached into any portion of the property of the plaintiff. That the order of injunction, has the effect of restraining the defendants from even carrying out repairing and renovation work in the premises.

Mr. Sen, learned Advocate appearing on behalf of the opposite party/plaintiff, submits that under the garb of repairing there is a chance that the petitioners might make further construction over and above the existing building. It is also contended that a portion of the property allegedly purchased by the petitioners is actually an encroachment into the area enjoyed by the plaintiff.

Under such circumstances, considering the *prima facie* case, balance of convenience and inconvenience as also the irreparable loss and injury, this Court is of the opinion that when the defendants are admittedly enjoying a property over a period of time, the defendants should be allowed to make necessary repairs and renovation of the building in question

without making any further construction over and above the existing building.

Thus the order passed by the learned lower appellate Court modified to the extent that the defendants shall be permitted to make their renovation and repair work but shall not claim any equity with regard to such construction. It is made clear that no third party interest will be created in schedule-A1 till the disposal of the application for temporary injunction. The petitioners will be at liberty to apply before the learned Court below stating the nature of repairs to be made.

Liberty is also granted to the plaintiff to pray for appointment of an Advocate Commissioner under whose supervision the repairing and renovation work will be conducted. If the appointment of the learned Advocate-Commissioner is granted, costs of the same will be borne by the plaintiff.

The order impugned is modified to the above extent.

The learned trial Judge is directed to conclude the hearing of the application for temporary injunction within a period of three months from date.

The parties are at liberty to file appropriate applications before the learned trial Judge by way of a put up petition.

The observations made hereinabove are restricted to the disposal of the revisional application with regard to the grant of an injunction at an ad interim stage but the learned trial Judge will be at liberty to proceed with the evidence and records as also the pleadings of the parties while disposing of the application for temporary injunction.

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.)**