

26.11.2021
(S/L-41)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 315 of 2021

Sri Nirmal Chandra Mondal @
Nirmal Mondal & Anr.
-Vs-
Aditi Goswami & Ors.

Mr. Arup Krishana Das,
.... For the Petitioner.

Affidavit-of-service filed by Mr. Arup Krishan Das, learned advocate for the petitioner be kept with the record.

None appears on behalf of the opposite parties in spite of service.

The petitioners were the plaintiffs of Title Suit No. 42 of 1993. The said suit was decreed by declaring title of the petitioners over the suit property, and by a further decree of permanent injunction the defendants were restrained from interfering with the right, title, interest and possession of the plaintiffs over the suit property.

The plaintiffs alleging violation of the said decree of injunction filed an application under Order XXI Rule 32 of the Code of Civil Procedure before the 3rd Court of Learned Civil Judge (Junior Division), Asansol District-Paschim Burdwan.

The said application was registered before the said Court as Misc. Case No. 41 of 2015. The petitioner in the said misc. case prayed for attachment of the property of the defendants/

opposite parties and removal of encroachments of the suit property.

The learned Trial Judge by the order impugned being order No. 106 dated July, 22 of 2020 has dismissed the said misc. case holding that the original decree was for declaration of permanent injunction and as such there is no scope to deviate from the said decree of permanent injunction by this Court and when the original decree was for permanent injunction how the Court can implement the same in the form of mandatory injunction.

The Court below has completely overlooked the explanation appended to order XXI Rule 32 of the Code, inserted by the Code of Civil Procedure (Amendment) Act 2002 w.e.f. July, 1, 2002.

Suffice to quote the said explanation to set aside the order impugned:-

“Order XXI Rule 32.....

Explanation.- For the removal of doubts, it is hereby declared that the expression “the Act required to be done” covers prohibitory as well as mandatory injunctions.]”

The order impugned is therefore set aside. C.O. 315 of 2021 is allowed with a direction upon the learned Trial Judge to decide the Misc. Case No. 41 of 2015 expeditiously in accordance with law.

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

(Biswajit Basu, J.)