

S/L 26
18.02.2021
Court. No. 19
GB

C.O. 352 of 2021

Anusuya Chatterjee @ Anasuya Chatterjee
Vs.
Smt. Anita Maity

(Through Video Conference)

Mr. Sounak Bhattacharya.

...for the Petitioner.

Mr. Tarak Nath Halder.

...for the Opposite Party.

This revisional application has been filed by the defendant in Title Suit No.203 of 2016, being aggrieved by an order dated January 22, 2021 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah, District 24 Parganas (South).

The petitioner is aggrieved because by the order impugned, the learned court below allowed an application under Section 151 of the Code of Civil Procedure. The learned court below directed the defendant to open the grill gate by removing the padlock fixed thereon or hand over an alternative key of the said padlock to the plaintiff and let the passage be accessed by the opposite as an easementary right over the suit property.

Mr. Bhattacharya, learned advocate appearing on behalf of the defendant submits that the learned court below erred in law and acted illegally and with material irregularity by allowing the said application, inasmuch as, the order

impugned amounts to allowing the main relief in the suit. It is also submitted by Mr. Bhattacharya that the common passage was not used as an access to the suit property and as such, the question of the plaintiff having an easmentary right over the said passage did not arise. Mr. Bhattacharya further submitted that the agreement for lease did not include the common passage and furthermore, just because the electric meter and the water tank of the tenant was situated in the common passage of the western side of the suit property, the tenant could not claim a daily access to the said passage. Mr. Bhattacharya further submitted that although the order impugned was passed on a remand by this Court, this Court in spite of having made observations on the propriety of the earlier order rejecting the self same application did not direct the learned court below to allow the application under Section 151 of the Code of Civil Procedure automatically, but directed re-adjudication of the said application on the basis of the report to be filed by the learned Advocate Commissioner. Mr. Bhattacharya further submitted that by following the decision of this Court in the matter of ***Sk. Rafiuddin Ahmed Versus Hazi Abdur Rahim and Ors.*** reported in ***(2008) 2 CHN (Cal) 40***, this Court was empowered to intervene and also hold that the earlier order passed by this Court was not sustainable in law and as such, the order impugned could not have been passed on the basis of the earlier order of this Court.

Mr. Halder, learned advocate appearing on behalf of the plaintiff/opposite party submits that in the prayer as stated in the plaint, the plaintiff has prayed for permanent injunction restraining the defendant from interfering with the peaceful possession of the tenanted property along with common passage situated in the western side of the suit property. The defect in the schedule of the plaint as to non-description of the suit property was not a fatal one. Moreover, the fact that the suit property was butted by a common passage in the western side has been clearly mentioned in the plaint. The agreement for lease also provides that the entire utility and essential infrastructure like electricity, water tank, sewerage and drainage, were all present in the common passage and the defendant could not restrict the opposite party from using the said common passage. He further submitted that in the decisions of ***Sanjit Pal versus Prabir Kumar Sun*** reported in ***AIR 1986 Cal 220*** and in the matter of ***Paresh Chandra Das versus Bikash Kumar Das*** reported in ***2010 (2) CLJ 110***, this Court has observed that even an application for restoration of property or status quo ante could be passed in an application under Section 151 of the Code of Civil Procedure.

I have heard the learned advocates for the respective parties.

I do not accept the first contention of Mr. Bhattacharya with regard to misdescription of the suit

property in the schedule of the plaint. The suit property has been described as the tenanted portion and the boundaries of the suit property have been clearly mentioned where existence of the common passage finds reference. Moreover, the report of the advocate Commissioner appointed pursuant to the direction of this Court in the earlier round of litigation, also mentions the existence of the common passage in the western side of the passage. This Court in an earlier occasion was also of the opinion that a restricted interpretation of the schedule of the plaint would not be proper in this case, as an order of status quo was passed with regard to nature, character and peaceful possession of the suit property, meaning thereby that in order to enjoy the suit property, the plaintiff should be allowed to use the amenities which came with the tenancy. However, whether the plaintiff has a right to the common passage on the basis of the deed of lease, is a matter to be decided in the trial but at an interim stage where all the utilities and facilities of the tenant is over the common passage and the report of the Commissioner affirms the existence of such a passage, I am of the opinion that the learned court below did not commit any error in passing the order impugned.

The judgment cited by Mr. Bhattacharya does not apply to the facts in this case, inasmuch as, His Lordship had held that when the order passed by a Coordinate Bench was a nullity and/or non-est in the eye of law, a Coordinate Bench could pass an order contrary thereto, but in this case

the decision of the learned Judge of the Coordinate Bench is well-reasoned and as such, I do not find any reason to differ with the issue which His Lordship had decided while disposing of the civil revision.

I am inclined to allow the prayer of Mr. Bhattacharya, that the suit should be expedited. The prayer is innocuous. The learned court below is directed to expedite the hearing of the suit and dispose of the same within a period of one year from the next date fixed independently and in accordance with law.

The revisional application is dismissed.

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.)