

09.03.2021
Sl. No. 5
srm

C.O. No. 459 of 2021

Suravi Sarkar & Ors.

Vs.

Pradip Das & Ors.

Mrs. Paromita Malakar (Dutta),

Ms. Sneha Das

...for the Petitioners.

Mr. Souri Ghosal

...for the Opposite Party.

This revisional application has been filed against an order dated January 30, 2021 passed by the learned Civil Judge (Junior Division), 1st Court, Uluberia, Howrah in Misc. Case No22 of 2020 arising out of an order dated November 21, 2020 passed in Title Suit No.317 of 2020 by the learned Civil Judge (junior Division), 1st Court, Uluberia, Howrah. The petitioners are the defendants in the suit.

According to the petitioners, the plaintiffs filed the suit for a declaration and permanent injunction. The allegation in the plaint, *prima facie* appears to be the disturbance created by the defendants for the use of the passage which allegedly is a common passage. The learned trial Court by the order dated November 21, 2020 restrained the defendants by holding that the plaintiffs had a *prima facie* case but strangely the learned Trial Judge did not mention what the defendants should be restrained from doing. It is alleged that thereafter a padlock

was put on the passage and the plaintiffs filed the misc. case along with the prayer under Section 151 of the Code of Civil Procedure for police help so that the order of the ad interim injunction could be implemented and further the padlock put on the passage would be removed by the police.

It was the contention of the plaintiffs that the plaintiff No.1 is an elderly gentleman and the blockage of the passage would result in obstruction of his free egress and ingress to the property in question, especially during medical emergency. The prayer for police to open the padlock was allowed.

It is submitted that the padlock was not put in the passage but on the premises enjoyed by the defendants/petitioners. On the contrary, it is urged that the padlock was put in the area which was used as a common passage by both the parties. Unfortunately, the order of the learned trial Judge is vague and as such the implementation of the said order would also be difficult in the fact situation.

Although the order under Section 151 of the Code of Civil Procedure directing the police to open the padlock has been challenge, however, as the temporary injunction application has not yet been disposed of, this revisional application is disposed of directing the learned Court below to

dispose of the application for temporary injunction within two months from the next date fixed.

It is made clear that till the disposal of the temporary injunction application, the parties shall be entitled to enjoy their respective shares and portions and also any common passage that is available in the suit premises.

The parties are entitled to lock up their respective areas but no padlock would be put in any common passage or area by both the parties.

These observations made hereinabove, are tentative and will be operational up to the disposal of the application for temporary injunction. The parties are at liberty to make further prayer before the learned Court below in this regard. The learned Court below while disposing of the application for temporary injunction will also dispose of the application under Order 39 Rule 2A of the Code of Civil Procedure in accordance with law.

As the proforma opposite parties in this revisional application are not the parties in the suit, they are not necessary parties for the purpose of disposal of the revisional application.

This revisional application is disposed of. The order impugned is modified to the above extent.

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.)