

16.03.2021
Sl. No. 16
srm

C.O. No. 524 of 2021

**Sri Sri Debottar Bhubaneswar Shibthakur Jew rept. by
Jharna Mukherjee & Ors.
Vs.
Shyamapada Miatur & Ors.**

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee

...for the Petitioners.

Mr. Bhaskar Ghose,
Mr. Siddhartha Paul

...for the Opposite Parties.

This revisional application has been filed challenging an order dated January 30, 2021 passed by the learned Civil Judge (Senior Division), Arambagh, District-Hooghly in Title Appeal No.16 of 2020. The title appeal arises out of a judgment and decree dated September 5, 2020 passed by the learned Civil Judge (Junior Division), 1st Court, Arambagh, District-Hooghly in Title Suit No.67 of 2014.

The petitioners are aggrieved by the rejection of their application for temporary injunction filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure in the title appeal.

It is contended by Mr. Roy, learned Advocate appearing on behalf of the petitioners/appellants, that while deciding the *prima facie* case, the learned lower appellate Court had actually held a mini trial and nothing further remained to be decided in the appeal. He next submits that not only the *prima facie* case

but the Court also should have arrived at a decision as to whether irreparable loss and injury would be caused to the debuttar property, specially when the specific case of the plaintiffs was that the defendants/opposite parties, who were outsiders, were disturbing the daily seba puja of the deity on the strength of the record of rights, which would not confer title but at best could have a presumptive value.

Mr. Ghose, learned Senior Advocate appearing on behalf of the opposite parties, submits that the title suit was decided on merits and the petitioners failed to prove that there was any seba puja conducted. He further submits that even at the stage of ad interim injunction the petitioners were unsuccessful. Thus, according to Mr. Ghose, nothing remained to be decided in the application for temporary injunction and the learned lower appellate Court should hear out the title appeal on its own merits.

I have considered the order impugned and the rival contentions of the parties.

The learned lower appellate Court upon considering the *prima facie* case denied the prayer of the petitioners for restraining the opposite parties from disturbing the enjoyment of the petitioners in respect of the debuttar property on the ground that the petitioners had failed to establish *prima facie*

that the property was an absolute debuttar and further the learned lower appellate Court was not *prima facie* satisfied that there was any threat of immediate alienation and damage to the property.

I find that the reasons assigned by the lower appellate Court for rejection of the temporary injunction is sufficient. There is no scope for interference with the order impugned. It appears that the hearing of the title appeal has fixed on March 25, 2021.

Under such circumstances, this revisional application is disposed of with a direction upon the learned lower appellate Court to dispose of the title appeal within a month from the next date fixed.

It is made clear that observations made in the order impugned while dealing with the application for temporary injunction, by the learned lower appellate Court are all tentative and the learned lower appellate Court will hear the title appeal on its own merits, on the pleadings and evidence.

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.)