

S/L 21
04.02.2021
Court. No. 19
GB

C.O. 806 of 2019

Sri Subhas Chandra Roy & Anr.
Vs.
Sri Krishna gobinda Ganguly & Ors.
(Through Video Conference)

Mr. Arjun Samanta,
Mr. Tanmay Kar.

...for the Petitioners.

Mr. Jagannath Ganguly.

...for the Opposite Party No.2
(In-Person)

Mr. Debanth Ganguly.

...for the Opposite Party No.3
(In-Person)

This revisional application is directed against an order dated February 2, 2019 passed by the learned Judge, 12th Bench, City Civil Court at Calcutta in Title Suit No.300 of 2018.

The petitioners are aggrieved by an order of the learned court below, by which an application under Section 151 of the Code of Civil Procedure for police help was rejected.

By an order of injunction dated May 18, 2018, the defendants were restrained from obstructing with the repairing work of the plaintiffs as per the sanctioned plan obtained from the Kolkata Municipal Corporation. The defendants were also restrained from disturbing the peaceful

possession of the plaintiffs in the suit property till disposal of the said injunction application.

Thereafter, the petitioners filed an application for police help on the ground that the defendants were interfering with the repairing work. The learned court below came to the finding that the application for police help could not be allowed in view of specific provisions of law under Order 39, Rule 2A of the Code of Civil Procedure.

The learned court below came to the finding that the defendants were restrained from making any unauthorized construction in their building premises on the basis of the order of the Special Officer (Building), Kolkata Municipal Corporation.

It is submitted that the repairing work as per the sanctioned plan of the Kolkata Municipal Corporation is going on. The defendants were also restrained from interfering with the peaceful possession of the plaintiffs in the suit property.

It is submitted on behalf of the petitioners that the learned court below has wrongly rejected the application for police help on grounds not tenable in law. It is submitted that the defendants have trespassed into the property of the plaintiffs and have been creating disturbance.

On the perusal of the application under Section 151 of the Code of Civil Procedure, I do not find any mention as to how and in what manner the defendants have been violating

the order of injunction and have disturbed the peaceful possession of the plaintiffs by trespassing into the premises.

Under such circumstances, I do not find any reason to interfere with the order impugned. Inherent power of the court for police help can be exercised under such circumstances, when the plaintiffs are able to bring to the notice of the court the nature and the manner of violation. This is a matter of public policy that all orders of the Court may be implemented even an order for injunction, but in the absence of proper pleadings and facts, the court rightly rejected the application for police help. However, if there is any trespass in future, the plaintiffs are always at liberty to approach the appropriate forum and seek appropriate remedies available under the law.

The defendants have submitted before this Court that they have no objection if the plaintiffs continue with the repairing work. The plaintiffs have also alleged encroachment, but there is nothing on record to show that the defendants have encroached into the property of the plaintiffs. However, these are matters to be decided in the suit upon trial. Both the parties are directed to maintain peaceful possession and enjoyment of each other's property, which are adjacent properties.

Disposal of this application will not prevent the plaintiffs from filing an appropriate application if the situation so arises.

It is informed that the opposite party no. 1 has expired and the name may be expunged as the heirs are on record. Accordingly, department is directed to expunge the name of the opposite party no.1 from the cause title.

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.)