

C.O.676 of 2021

**PRABESH ALIAS PRAVESH CHANDRA
YADAV VS. SATISH CHANDRA YADAV ALIAS AHIR &
ORS.**

Mr. Aritra Shankar Ray
..for the petitioner
Mr. Siba Prasad Ghosh
Mr. Sukanta Das
..for the Caveator

This revisional application arises out of an order dated December 15, 2020 passed by the learned Civil Judge, Senior Division, 2nd Court, Paschim Medinipore in Title Suit No. 319 of 2020.

Title Suit No. 319 of 2020 is a suit for partition and permanent injunction. By an ad-interim order of injunction dated December 17, 2020, the learned Court below directed the defendant nos. 1&2 in the suit to maintain status quo with regard to nature, character and possession over 'A' and 'B' Schedule property. The defendant no.3 was directed not to make any construction over the 'A' schedule property and not to transfer any portion of the 'B' schedule property to any outsider. The plaintiffs failed to comply with the provisions of Order 39, Rule 3(a)(b) of the Code of Civil Procedure and accordingly an application under Order 39 Rule 4 of the Code of Civil Procedure was filed by the petitioner/defendant no.2. Accordingly, the interim order

was vacated by an order dated December 23, 2020. The plaintiffs, thereafter, filed an application under Section 151 of the Code of Civil Procedure for recalling of the order dated December 23, 2020, by which, the interim order was vacated. The said application came up for hearing before the learned Court below on March 6, 2021 and the application under Section 151 of the Code of Civil Procedure was rejected on the ground that the plaintiffs did not challenge the order dated December 23, 2020 before the higher forum and as such there was no reason to recall the said order. While rejecting the application under Section 151 of the Code of Civil Procedure, the learned Court below imposed another order of status quo over the suit property as per the schedule which in my opinion was totally contrary to the findings in the previous paragraphs of the order impugned. It appears that the injunction application had been fixed for hearing on April 26, 2021.

Under such circumstances, this revisional application is allowed. The order impugned is quashed and set aside.

The learned court below is directed to hear out the application for injunction within a month from the date of communication of this order.

Written objection to the injunction application to be filed within one week from date. The learned Court

below shall also direct the other defendants to file their written objection to the injunction application.

All actions taken by the parties in the meantime shall abide by the result of the injunction application. The parties are not entitled to claim any equity for any act on the undivided property. The other defendants/opposite parties have not contested the proceeding so far, and as such service of the revisional application is dispensed with against them.

The petitioner is directed to serve a server copy of this order upon other contesting defendants within two days from date. The learned court below and the parties will act on a server copy of this order and dates may be fixed accordingly.

This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

