

19.08.2021
S/L No.24
KS

(Via Video Conference)

C.O. 835 of 2021

Sri Khokhon Sil

-Vs.-

Sri Jayanta Indra

Mr. Siva Prasad Ghose

.....For the Petitioner

Mr. Soumya Banerjee

.....For the Opposite Party

The petitioner has challenged an order dated December 4, 2000 passed in a suit under Section 6 of the Specific Relief Act, 1963 filed by the plaintiff/opposite party. By the impugned order, the Trial Court granted a mandatory injunction directing possession of the suit property to be restored to the opposite party, thereby granting the main relief prayed in a suit itself.

A suit under Section 6 is not a title suit and the limited scope of consideration in such a suit is whether the plaintiff was in valid possession prior to the alleged dispossession, whether the defendant dispossessed the plaintiff and whether the suit has been instituted within the statutory time. Since, in deciding such a suit, the Court is to follow a summary procedure, there is no scope of grant of mandatory injunction to the tune of the relief prayed in the suit itself at this premature stage.

Moreover, nothing has been recorded in the impugned order to suggest that the plaintiff-opposite party made out an extremely rare case, sufficient to hold that the prima facie case and other factors for grant of mandatory injunction were so much in favour of the plaintiff that the status quo of the suit property had to be disturbed by granting the relief prayed in the suit itself by way of an interlocutory relief.

Since the matter arises from an order passed in an injunction application in a proceeding under Section 6 of the Specific Relief Act, against the final decree of which no appeal is maintainable, this revisional application is entertained and disposed of in the absence of alternative remedy.

The Trial Court acted in gross abuse of the process of Court and in patent violation of all settled legal norms and beyond its jurisdiction in passing the impugned order.

Accordingly, C.O. 835 of 2021 is allowed on contest, thereby setting aside the impugned order dated December 4, 2000 passed by the Civil Judge, Junior Division at Bidhannagar, District: North 24 Parganas in Title Suit No.243 of 2020. The opposite party is restrained from taking any further steps in pursuance of the impugned order, including subsequent implementation of such order, till disposal of C.O. 847 of 2021, which has been filed by the present petitioner against a

subsequent order granting police help to implement the order impugned in the present revisional application, since such a stay is a necessary incident of setting aside of the impugned order. The parties as well as the Court below shall act on the server copy of this order, along with a communication by the learned advocate for either of the parties, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Sabyasachi Bhattacharyya, J.)