

11.08.2021
(S/L-22)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1125 of 2021

Md. Sabid Ali alias Sabid Ali & Anr.
-Vs-
Abu Daium & Ors.

Mr. Atanu Biswas,
..... For the petitioners.

Mr. Jyoti Prakash Chatterjee,
..... For the O.P. Nos. 1 & 2.

Affidavit-of-service filed in Court today be kept
with the record.

The revisional application under Article 227 of
the Constitution of India is at the instance of the
plaintiffs in a suit for declaration and is directed
against the order dated March 03, 2021 passed by
the learned Civil Judge (Senior Division), Kalna,
District- Purba Bardhaman in Misc. Appeal No. 3 of
2020 thereby affirming the judgment and order dated
August 18, 2020 passed by the learned Civil Judge
(Junior Division) Kalna, District-Purba Bardhaman in
Title Suit No. 72 of 2020.

The petitioners in the said suit filed an
application under Order XXXIX Rules 1 and 2 of the
Code of Civil Procedure praying for an order of
injunction.

The learned Trial Judge on June 22, 2020
passed the following ad interim order on the said
application:-

“that the plaintiff and the defendants are hereby directed to maintain status quo in terms of change in regard to transfer, construction, demolition or alienation of schedule mentioned suit property and also of nature, character, possession or creating any disturbance over the schedule mentioned suit property to the plaintiff till disposal of the temporary injunction petition.”

The defendant no. 1 filed an application questioning the maintainability of the said application for injunction on the ground that the plaintiffs in the plaint and in the said injunction application have suppressed the fact that they have already initiated proceeding under Section 8 of the West Bengal Land Reforms Act, 1955 to pre-empt the sale of the suit property in favour of the defendant no. 1.

The learned Trial Judge by the order no. 6 dated August 18, 2020 allowed the said application and vacated the said ad interim order of injunction and by the selfsame order fixed November 17, 2020 for hearing of the said suit on the point of maintainability.

The petitioners, being aggrieved by the said order, preferred the connected miscellaneous appeal being Misc. Appeal No. 3 of 2020.

The learned Civil Judge (Senior Division) Kalna, Purba Bardhaman by the order impugned has dismissed the said Miscellaneous appeal, thereby has affirmed the order of the learned Trial Judge.

Mr. Atanu Biswas, learned advocate appearing on behalf of the petitioners submits that his clients are under the threat of dispossession by the defendants and other persons, that is why the petitioners have filed the suit and unless the ad interim order of injunction passed by the learned Trial Judge is restored, they will suffer irreparable loss and injury.

Mr. Jyoti Prakash Chatterjee, learned advocate appearing for opposite party nos. 1 and 2 responding to the said contention of Mr. Biswas submits that apart from the suppression of the pendency of the said pre-emption proceedings, the relief sought for in the suit is barred under Section 21(3) of the West Bengal Land Reforms Act, 1955, as such, the courts below have not committed any jurisdictional error in vacating the said ad interim order of injunction.

Heard learned advocates for the parties, perused the materials-on-record.

The relief sought for in the application under Section 8 of the West Bengal Land Reforms Act, 1955 vis-à-vis the relief sought for in the suit are completely different based on separate cause of action, as such, non-disclosure of the filing of the said pre-emption case either in the plaint or in the application for injunction cannot be suppression of a material fact relevant to the issue to be decided in the suit or in the application for injunction thereto.

Therefore, the courts below are not justified in vacating the said ad interim order of injunction on the ground of suppression of the said facts.

However, when a question of maintainability of the said suit has been raised on the ground of bar of Section 21(3) of the West Bengal Land Reforms Act, 1955 and the learned Trial Judge has decided to address the said issue first, this Court is not inclined to interfere with the order impugned but the petitioners since are apprehending imminent danger of dispossession from the suit property, the learned Trial Judge is requested to decide the issue of maintainability of the said suit expeditiously and depending upon the outcome of the said issue, shall decide the said application for injunction expeditiously.

C.O 1125 of 2021 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)