

7
sandip
Ct. 18
01.10.2021

**C.O. No. 1450 of 2021
(Via Video Conference)
Smt. Sharbani Nandi
Vs.
The Inspector General of Registration and
Commissioner of Stamp Revenue, West Bengal
& Ors.**

Mr. Haradhan Banerjee,
Mr. Subhadip Biswas ... For the petitioner.
Mr. Anirban Ray, Ld. G.P.,
Mr. Raja Saha, Ld. Jr. Govt. Adv.,
Mr. B. B. Basu Mallick ... For the State.

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

The plaintiff in a suit for permanent injunction is the petitioner of the present application under Article 227 of the Constitution of India which is directed against order dated August 10, 2021 passed by the 7th Court of learned Civil Judge (Senior Division), District- 24 Parganas (South) at Alipore in the said suit being Title Suit No. 705 of 2021.

The learned Trial Judge by the order impugned has refused to grant leave to the petitioner under sub-section (2) of Section 80 of the Code of Civil Procedure to file the connected suit without complying the requirement of serving a prior notice under sub-section (1) of Section 80 thereof on the ground that since there is already a subsisting order of injunction in the suit for partition filed by the petitioner against her co-sharers, there is no urgency in the filing of the connected suit requiring grant of the said leave.

Mr. Haradhan Banerjee, learned counsel for the petitioner drawing my attention to a letter dated August 26,

2020 annexed to the revisional application, submits that the opposite party no. 2 when was communicated with the said order of injunction passed in the said partition suit, refused to act in compliance with the said order on the ground that the Government is not a party to the said suit, therefore, the learned Trial Judge is not justified in refusing the said leave simply on the ground of existence of the said order of injunction.

The refusal of the opposite party no. 2 to comply the order of injunction passed in the said partition suit on the ground that the Government is not a party to the said suit has prompted the petitioner to file the connected suit against the opposite parties.

The said subsisting order of injunction passed in the said partition suit, prima facie, signifies that the petitioner requires urgent relief, therefore, she is entitled to the leave under sub-section (2) of Section 80 of the Code.

The order impugned, for the aforesaid reason, is set aside. Leave, as prayed for, is granted to the petitioner. The plaint of Title Suit No. 705 of 2021 be registered.

C.O. 1450 of 2021 is thus, allowed 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.)