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C.O. 1510 of 2021

Amit Samanta
Versus
Sujit Samanta & Anr.

(Via Video conference)

Mr. Toslim Ali,
Mr. Subhangsu Maiti,
... For the Petitioner/plaintiff.

Mr.Raj Kr. Sain.
... for the O.P. No.1.

The order dated 3rd August, 2021 passed by the learned Civil Judge (Junior Division), 2nd Court, Uluberia in T.S. No.299 of 2020 allowing repairing work to be performed with respect to 'B' Schedule property is a subject of challenge in this revisional application.

Learned Advocate Mr.Toslim Ali, representing the petitioner/plaintiff submits that in connection with a suit for declaration and injunction, petitioner/plaintiff has already been favoured with an *ad interim* order of injunction. That injunction application has not yet been disposed of, and not even any application under Order 39 Rule 4 CPC has been filed by the opposite parties praying for modification and/or alteration of the injunction order granted in this case.

Learned Advocate for the petitioner contends that under the guise of repairing work, there will be total change in the nature and character of the 'B' schedule property, which is not permissible under the provisions of law, and more so when there is an *ad interim* injunction order directing an order of status quo to be maintained with respect to suit

property involved in the suit, the Court below ought not to have allowed repairing work. It is also contended by the learned Advocate for the petitioner that petitioner/plaintiff has already filed an application under order 39 Rule 2A CPC alleging violation of the *ad interim* order of injunction, which is also pending for hearing. In such context, according to the learned Advocate for the petitioner, the repairing work, if allowed to be conducted, there will be total change in nature and character of the suit property involved in this case.

Incidentally, learned Advocate for the petitioner draws attention of the Court to local Inspection Commissioner's report, annexed at Page 31 of the instant revisional application. Adverting to 'B' schedule property, shown in learned Inspection Commissioner's report, it is submitted that 'B' schedule property is a vacant land, but upon perusal of the learned Inspection Commissioner's report, it appears that there is a two storied building in 'B' schedule property, the plastering of which, both inside and outside, is not done, which has been sought to be done taking order of the Court below.

Per contra, learned Advocate representing the opposite party/defendant No.1 submits that the prayer for local inspection was considered by the learned Court below, upon receiving a local Inspection Commissioner's report, and there is two storied building situated upon the 'B' schedule property, which needed urgent repairing work. According to the learned Advocate for the opposite party, there will be no additional repairing work or any other constructional work, excepting the repairing work in the 'B' schedule property and

thereby limiting to the work of plastering both inside and outside inclusive of floor of such two storied building and nothing else. It is thus challenged by the learned Advocate for the opposite party that the instant revisional application deserves to be dismissed for want of merits.

Admittedly, the prayer for local inspection was held upon due consultation of local Inspection Commissioner's report, and the Court while considering the repairing work under Section 151 CPC had taken adequate consideration of the local Inspection Commissioner's report.

Upon considering of the present status of the 'B' schedule property, mentioned in the learned inspection Commissioner's report, the Court below observed that 'B' schedule property needed urgent repairing work for the sake of safeguarding the human life and the property from imminent danger. The Court below also was quite alive of the fact that there is an order of *ad interim* injunction and in that context petitioner was not allowed to undertake any change of the nature and character of the suit property in the guise of undertaking plastering work of dwelling house situated at 'B' schedule property.

Learned Advocate for the opposite party assures the Court that repairing work to the extent of undertaking plastering work, both inside and outside of the two storied building including its floor remaining unplastered will be only undertaken, and no other additional works in the name of repairing will be conducted.

Upon perusal of the impugned order, it appears that neither any apparent illegality, nor any perversity is there in the order requiring interference.

The revisional application, is thus, disposed of observing therein that the extent of repairing work, as ordered to be undertaken by the learned Court below, if conducted, shall not change the nature and character of the suit property. Learned Court below is further directed to dispose of the injunction application expeditiously as possible if the same is otherwise ready for hearing.

With these observations and directions, the revisional application stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties on usual undertaking.

(Subhasis Dasgupta, J)