

14.09.2021
Item No.16
Ct. No.7
CHC

**C.O.1606 of 2021
(Physical Hearing)**

**Syed Taufique Ahmed & ors.
Vs.
Sri Sri Ramkrishna Saradeswari Trust & ors.**

Mr. Sounak Bhattacharya,
Mr. Sumitava Chakraborty,
Mr. Zohaib Rauf,
Mr. B. Bag
...for the petitioners

Mr. Ganesh Shrivastava,
Mr. Sukanta Das
...for the opposite parties

Parties are represented by the learned advocates, names of whom are shown at the top of this order sheet.

The impugned order dated 2nd September, 2021, passed by learned District Judge, Paschim Medinipur, in Judicial Misc.Case No.58 of 2006, allowing an application under Section 34 of the Indian Trust Act, thereby simultaneously rejecting the prayer of the petitioners for addition of a party under Order 1 Rule 10(2) of the C.P.C. and further allowing police help to complete the construction work in the subject land

within the period, shown in the impugned order, is the subject of challenge in this revisional application.

Admittedly, a Judicial Misc.Case No.58 of 2006 filed by the opposite parties under Section 34 of the Indian Trust Act was taken out praying for permission to sell the trust properties, shown in 'Ka' schedule of the said Misc.Case.

Mr. Bhattacharya, learned advocate expresses his grievance against the rejection of petition of petitioners under Order 1 Rule 10(2) C.P.C. and also for allowing police help on the prayer of opposite parties, and thereby allowing opposite parties to complete construction within the time framed by the learned court below.

Mr. Bhattacharya, advertng to Order No.2 dated 12th October, 2018 passed in T.S.582 of 2018 by learned Civil Judge (Senior Division), 1st Court, Medinipur, being page 32 of instant revisional application, learned advocate for the petitioners submits that in the aforesaid suit for partition, the opposite parties are arrayed as defendants, and against whom an injunction order has already been granted by the court below, which is very much in force.

The injunction order, according to Mr. Bhattacharya, granted in T.S.582 of 2018 is very much within the knowledge of the opposite parties.

Mr. Bhattacharya, does not raise dispute at this moment for an application under Section 34 of the Indian Trust Act being allowed thereby allowing the opposite parties to sell the trust properties mentioned in 'Ka' schedule of referred case.

Mr. Ganesh Shrivastava, learned advocate representing the opposite parties in reply submits that the court below upon perusal of the status and the interest of petitioners, if there be any, sought to be added as intervener, rejected the prayer for addition of petitioners under Order 1 Rule 10(2) C.P.C, and there lies nothing to be interfered with in the impugned order, whenever a suit being T.S.582 of 2018 is pending before the learned Civil Judge (Senior Division), 1st Court, Medinipur. It is, thus, sought to be impressed by Mr. Shrivastava that relief sought to be obtained for the violations of the injunction order may be duly addressed by the learned court below upon resorting to appreciate provisions of law, as abundantly available in the Code of Civil Procedure.

According to Mr. Shrivastava, the opposite parties would simply raise boundary wall around the 'Ka' scheduled property simply to protect the 'Ka' scheduled property against unlawful intrusion, and with the raising of such boundary wall, taking the help of police there will be no apparent violation of

any Court's order thereby adversely affecting the interest of anybody else including the petitioners.

It is not in dispute that one Nihar Kumari Dasi is the creator of the trust property, who executed a deed of trust on 12th May, 1946, registered on 13th May, 1946 for her spiritual devotion to Sri Sri Ramkrishna Paramhangsha Deb and Saradeswari Devi thereby extinguishing all her interest thereon. It is found from paragraph-2 of Judicial Misc.Case No.58 of 2006, that Nihar Kumari/Niharbala was issueless.

Mr. Bhattacharya, in such context proposes that unless an interim protection is given in this case thereby restraining the order of implementation of the police help, the entire purpose of this revisional application may be frustrated.

The Court is not prepared to accept the contention advanced by Mr. Bhattacharya on the simple ground that the point now sought to be addressed for stalling the implementation of the police help may be duly redressed by inviting an adequate application in T.S.582 of 2018 of learned Civil Judge (Senior Division), 1st Court, Medinipur, wherein, an injunction order has been granted on 12th October, 2018.

As regards rejection of the prayer for addition of the parties, the Court is of the view that when the learned court below upon considering the pros and

cons of the case rejected the prayer for addition of the parties thereby disbelieving the slightest interest, if there be any, of the petitioners, sought to be impleaded on the subject of Trust property, upon exercising the judicial discretion, such discretion being reasonably exercised, must go unaltered at the moment. More so, petitioners are neither trustees, nor beneficiaries of Trust property having conflicting interest with Trustees in Trust property.

The rejection of prayer for addition of party under Order 1 Rule 10 C.P.C. and simultaneous allowing police help to ensure police protection do not call for any interference.

The instant revisional application is thus disposed of giving liberty to the petitioners to take recourse to pending Title Suit No.582 of 2018 by taking out an appropriate application for the purpose of alleged violation of the injunction order, if there be any.

However, the construction work permitted to be raised within the period, shown in the impugned order, shall be abide by the decision of the T.S.582 of 2018 of learned Civil Judge (Senior Division), 1st Court, Medinipur, and against which opposite parties may not be permitted to claim any equity in any manner whatsoever with respect to subject land, covered in T.S.582/2018, referred above.

With this observation, the instant revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)