

07.10.2021
Item No.5
Ct. No.7
CHC

**C.O.1793 of 2021
(Physical Hearing)**

**Samir Das & ors.
Vs.
Sukumar Mondal & ors.**

Mr. Nani Gopal Sarkar,
Mr. Devranjan Das
...for the petitioners

The impugned order dated 2nd September, 2021, passed by learned Civil Judge (Junior Division), 2nd Court, Uluberia, Howrah, in Title Suit No.109 of 2012, refusing to grant any interim order is the subject of challenge in this revisional application.

Mr. Nani Gopal Sarkar, learned advocate for the petitioners/plaintiffs submits that opposite parties/defendants have been putting their efforts by digging earth from the suit property with the sole intention of causing change in the nature and character of the suit property, and since the opposite parties were the Caveators, the prayer for temporary injunction pending before the court below, filed by the petitioners/plaintiffs, could not be disposed of till date.

In such context, the petitioners filed a separate application dated 24th August, 2021 seeking an

interim order till the disposal of the injunction application so that opposite parties may be restrained by an order of injunction from causing any change in respect of the nature and character of the suit property.

It is further submitted that previously a direction has been passed by this Court in C.O.3160 of 2019 at the instance of the petitioners requiring the court below to dispose of the suit including the pending temporary injunction application. Such direction of the High Court, in spite of the same being communicated to the court below, till date the same has not been complied with.

Upon perusal of the impugned order, it appears that the defendants/opposite parties not being served with the copy of the application, relying upon whom, the prayer for interim order was sought for in the court below, no order was passed by the learned court below. But the learned court below however, proceeded to fix the suit for *ex parte* hearing.

In view of the nature of the order proposed to be made, and the point sought to be addressed by this Court, the Court is of the view that the point is very short and it does not require any extensive hearing and same may be disposed of right now giving suitable measure therefor, without securing presence of the opposite parties/defendants. Accordingly,

service upon the opposite parties stands dispensed with.

Learned court below is directed to dispose of the pending injunction application under Order 39 Rule 1 and 2 C.P.C. expeditiously as possible upon sensing direction already contained in C.O.3160 of 2019, so that the logical conclusion of the injunction application may be reached at an early date, preferably within ten weeks from the date of communication of this order.

In doing such exercise, the learned court below is directed to offer sufficient opportunities of hearing to either of the parties to this case, but without granting unnecessary adjournment unless it is extremely unavoidable.

The petitioners are directed to make communication of this order to the learned court below as well as to the opposite parties and their learned advocates appearing in the court below.

With the above observations/directions, 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.)