

27
sandip
Ct. 18
16.11.2021

**C.O. No. 1448 of 2020
(Via Video Conference)**

**Sanjit Jana
Vs.
Sri Nilanjan Mal**

Mr. Sanjib Mal,
Mr. Soumen Bhattacharjee ... For the petitioner.

Mr. Subrata Bhattacharjee ... For the opposite party.

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

The defendant in a suit for declaration is the
petitioner of the present application under Article 227
of the Constitution of India which is directed against
the judgment and order dated July 22, 2020 passed
by the learned District Judge at Howrah in Misc.
Appeal No. 51 of 2019.

The learned Trial Judge by the Order No. 26 dated
January 30, 2019 allowed an application for
injunction filed by the plaintiff/opposite party.

The learned Trial Judge by the said order, directed
the parties to maintain status quo as regards the
nature, character, title and possession over the suit
property till the disposal of the said suit.

The petitioner aggrieved by the said order preferred
the connected Misc. Appeal No. 51 of 2019.

The appeal Court below by the order impugned has
affirmed the order of the learned Trial Judge.

Mr. Sanjib Mal, learned counsel appearing on behalf of the petitioner submits that since both parties are claiming possession over the suit property the appeal Court below felt it necessary to hold local inspection of the suit property to ascertain the parties' possession but without taking said recourse, has affirmed the order of the learned Trial Judge.

In the present case, both the parties are claiming possession over the suit property, under such circumstances, an order of injunction in the form of status quo regarding possession over the suit property without ascertaining as to who is in possession of the suit property shall create numerous complications; as such, the appeal is required to be heard afresh to avoid such complications.

The order impugned, for the aforesaid reason, is set aside.

C.O. 1448 of 2020 is disposed of with a request to the appeal Court below to decide the said appeal afresh in accordance with law, expeditiously.

The parties are at liberty to adduce evidence in the said appeal in support of their respective claims by taking recourse of Order XLI Rule 27 of the Code of Civil Procedure.

There shall be no 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.)