

08.07.2022
(D/L-09)
Ct.-18
(Susanta)

C.O. 03 of 2022

Md. Yakub Molla & Ors.
-Vs-
Sayeeda Bibi & Ors.

Mr. Gopal Chandra Ghosh,
Mr. Souri Ghosal,
.... For the Petitioners.

Mr. Asit Hossain,
Mr. Mahesh Joshi.
Mr. Kajal Kumar Dutta,
Mr. Sandip Joshi,
.... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for declaration and is directed against the order dated December 01, 2021 passed by the 3rd Court of learned Civil Judge (Junior Division) at Alipore in the said suit being Title Suit No. 199 of 2006.

The learned Trial Judge has disposed of the application for injunction filed by the plaintiffs by directing the parties to maintain status quo in respect of nature and character of the suit property till the disposal of the said suit.

The application of the petitioner for implementation of the said order of injunction by police assistance was dismissed vide order dated February 22, 2021.

The learned Trial Judge by the order impugned has dismissed an application filed by the plaintiffs seeking reconsideration of the said order dated February 22, 2021.

Mr. Ghosh, learned Counsel appearing on behalf of the petitioners submits that the defendants since are disturbing the possession of the plaintiffs over the suit property by violating the order of injunction, the plaintiffs are praying implementation of the said order of injunction by police assistance, he places heavy reliance on the Advocate Commissioner's report in support of his submission that the plaintiffs are in possession of a demarcated portion of the suit property.

Having heard Mr. Ghosh and on perusal of the materials-on-record, it appears that in the order of injunction, the learned Trial Judge has observed that the Commissioner's report cannot be considered conclusive and without ascertaining the area of the plaintiffs, neither party can be permitted to change the nature and character of the suit property.

The plaintiffs are alleging violation of the said order of injunction but no proceeding under Order XXXIX Rule 2A of the Code has been initiated by them.

Moreover, the plaintiffs have not challenged the earlier order dismissing their application for such police help. The subsequent application fails to make out a case for reconsideration of the said earlier order.

This Court for the aforesaid reasons, is not inclined to interfere with the order impugned.

This order however will not prevent the plaintiffs to renew their prayer for similar relief

subject to clear proof of the violation of the order of injunction and their possession over the suit property.

C.O. 03 of 2022 is dismissed with the above terms 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.)