

31.03.2022
Item No.10
Court No.18
AJ.

C.O. 228 of 2022

Vigneshwara Properties Pvt. Ltd.

-Vs-

Ajoy Mondal & Ors.

Mr. Partha Pratim Roy,

Mr. Anirban Das.

....for the petitioner.

Mr. Sounak Bhattacharya,

Mr. Sounak Mondal.

.....for the opposite parties.

The petitioner of the present revisional application under Article 227 of the Constitution of India is the defendant no. 1 of the Title Suit No. 509 of 2021 pending before the Learned Civil Judge (Junior Division) at Barasat, District – 24 Parganas (North).

The plaintiffs/opposite parties in the said suit are praying for a decree of declaration of their right, title and interest over the suit property and also for a decree of permanent injunction.

The plaintiffs in the said suit filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure praying for an order of injunction restraining the defendants from ousting the plaintiffs from the suit property and/or changing the nature and character of it.

The learned Trial Judge on the said application on August 23, 2021 passed an ad-interim order of injunction directing both the parties to maintain *status quo* with the rider i.e. in connection with the ousting of the plaintiffs

from the suit property and/or making any illegal construction over it till 13.09.2021.

The petitioner being aggrieved by the said ad-interim order of injunction has preferred the connected Misc. Appeal No. 90 of 2021, before the learned Additional District Judge, Fast Track Court – III, Barasat, District 24-Parganas (North).

The Appeal Court below by the order impugned being Order No. 12 dated March 31, 2022 has dismissed an application filed by the petitioner praying stay of operation of the order under challenge in the said appeal.

Mr. Roy, learned Counsel appearing on behalf of the petitioner submits that the plaintiffs have admitted in the plaint that they have failed to mutate their name with the concerned Municipal Authority which prima facie indicate that the plaintiffs are not in possession of the suit property but the ad-interim order indicating that the said order was passed to protect the plaintiff's possession over the suit property is contrary to the record and highly prejudicial to the petitioner, the appeal Court should have stayed the operation of the said order pending challenge to it in the appeal.

Mr. Sounak Bhattacharya, learned Counsel appearing on behalf of the plaintiffs/opposite parties on the other hand

submits that in the plaint the plaintiffs have specifically stated that they are cultivating vegetables in the suit property.

Be that as it may, the appeal is against an ad-interim order of injunction at this stage, detailed enquiry as to the right of the parties is not warranted.

Pending disposal of the suit to protect the *prima facie* rights of the parties, the application for injunction needs to be disposed of expeditiously. The learned counsel for the parties are not in variance to the said requirement.

C.O. 228 of 2022 is, therefore, disposed of by requesting the 1st Court of the learned Civil Judge (Junior Division) at Barasat, District-24-Parganas (North) to dispose of the application under Order XXXIX Rules 1 and 2 of the Code filed by the plaintiffs as expeditiously as possible preferably before the ensuing summer vacation of the Court below and in doing so, shall not grant any unnecessary adjournment to either of the parties.

Mr. Roy, on instruction, submits that his client in view of the aforesaid direction is not willing to proceed with the connected Misc. Appeal No. 90 of 2021. The said appeal accordingly be treated as disposed of.

The Appeal Court below on communication of this order shall immediately transmit the lower Court records to the Court below.

It is, however, made clear that this Court has not gone into the merit of the application for injunction, it is for the learned Trial Judge to decide the same in accordance with law.

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.)