

04.03.2022  
Item No.15  
Court No.18  
AJ.

**C.O. 237 of 2022**  
**(Through Video Conference)**

**Sohidul Islam & Anr.**  
**-Vs-**  
**Firoja Bibi & Ors.**

Mr. Gopal Chandra Ghosh,  
Mr. Rajkrishna Mondal.  
....for the petitioners.

Mr. Partha Pratim Roy,  
Mr. Animesh Das.  
....for the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants/appellants in a suit for declaration and is directed against the order dated December 21, 2021 passed by the learned Additional District Judge, Fast Track- 3<sup>rd</sup> Court at Barasat, District 24-Parganas (North) in Miscellaneous Appeal No. 147 of 2019 thereby affirming the ad-interim order of injunction dated September 24, 2019 passed by the 1<sup>st</sup> Court of the learned Civil Judge (Junior Division), Barasat in Title Suit No. 567 of 2019.

The learned Trial Judge by an ad-interim order of injunction dated September 24, 2019 directed the parties to the suit to maintain status quo in respect of nature and character of the suit property till November 4, 2019.

The petitioners aggrieved by the said order preferred the connected Misc. Appeal.

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

On perusal of the plaint of the suit, it appears that the plaintiffs are praying for a decree of declaration simplicitor over the joint properties of the parties without seeking any further relief of partition of it.

The suit, as it is framed, is apparently barred by the proviso appended to Section 34 of The Specific Relief Act, 1963. An order of injunction cannot be granted in aid of a suit which is, on the face of it, not maintainable.

The order impugned with that of the order of the learned Trial Judge dated September 24, 2019 are set aside. The application under Order XXXIX Rules 1 and 2 filed by the plaintiffs/opposite parties pending before the learned Trial Judge is dismissed.

This Court is informed that the trial of the suit has not yet commenced.

The plaintiffs are at liberty to take appropriate steps for amendment of the plaint and thereafter may take out appropriate application for injunction, if so advised.

C.O. 237 of 2022 is disposed of 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.)**