

(19)
20.06.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 338 of 2018

Haidar Ali Sk. & ors.
-versus-
Mir Abu Taleb & ors.

Mr. Shibasis Chatterjee,
... for the petitioners.

Mr. Shibasis Chatterjee, learned counsel for the petitioners, files affidavit of service which is taken on record.

None appears on behalf of the opposite parties in spite of service.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for declaration of title and permanent injunction which is directed against the order no. 41 dated October 25, 2017 passed by the 2nd Court of learned Civil Judge (Junior Division), Berhampore, District : Murshidabad in the said suit being Title Suit No. 122 of 2007.

The learned Trial Judge by the order no. 5 dated July 04, 2007 allowed an application filed by the plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure thereby directing the defendants not to disturb the peaceful possession of the plaintiffs in the 'Ka' schedule property of the plaint till the disposal of the suit.

The plaintiffs filed an application under Section 151 of the Code of Civil Procedure praying implementation of the said order by police assistance alleging that the defendants are trying to disturb their possession over the said 'Ka' schedule property in violation of the said order of injunction.

The learned Trial Judge by the order impugned has dismissed the said application holding that when there is a specific provision under the Code of Civil Procedure regarding violation of the order of injunction, Section 151 of the Code cannot be resorted to.

The provision of Order XXXIX Rule 2A of the Code provides consequence of willful violation of the order of injunction. The said provision cannot be resorted to for the purpose of implementation of an order of injunction. Section 151 of the Code is the only available provision under the Code for such an order, subject to a case being made out.

The order impugned, therefore is not sustainable and is accordingly set aside.

The learned Trial Judge is requested to decide the said application afresh in accordance with law.

In view of the nature of the application, the learned Trial Judge is requested to dispose of the said application as expeditiously as possible.

It is made clear that this Court has not gone into the merit of the said application.

CO 338 of the 2018 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 party subject to compliance of all requisite formalities.

(Biswajit Basu, J.)