

04.01.2022
Item No. 03
Court No.18
A.J.

C.O. 341 of 2018
(Through Video Conference)

Rana Mukherjee & Ors.
-Vs-
Sri Sudip Mukherjee & Anr.

Mr. Sadananda Ganguly,
Mr. Arup Kumar Chatterjee.
...for the petitioners.

The plaintiffs in a suit for declaration of title and injunction are the petitioners of the present application under Article 227 of the Constitution of India which is directed against order dated September 12, 2017 passed by the 1st Court of the learned Civil Judge (Junior Division), Sealdah in the said suit being Title Suit No. 75 of 2015.

In the said suit petitioners are praying, inter alia, for a decree of declaration that the suit passage is made for common usage of the plaintiffs and the defendants and the defendants have no right to interfere with the free access and smooth usage of the same by the plaintiffs.

The petitioners in the said suit filed an application under Section 151 of the Code of Civil Procedure alleging that the defendants have put a padlock on the gate of the suit passage thereby obstructing the free ingress and egress of the plaintiffs through the said passage and prayed removal of the said padlock.

The learned Trial Judge, by the order impugned, has dismissed the said application holding that it is not clear whether at the time of passing status quo order of injunction, the alleged gate of the suit passage was used by both the parties and/or since then the gate is under lock and key.

Mr. Sadananda Ganguly, learned senior advocate appearing on behalf of the petitioners submits that the application under Order XXXIX Rules 1 and 2 of the Code filed by the plaintiffs was disposed of by directing that the defendants will not disturb the plaintiffs and the plaintiffs will not disturb the defendants for the usage and enjoyment of the common suit passage, therefore, the defendants at this stage, violating the said order of injunction, cannot put a padlock on the entrance door of the suit passage.

Mr. Ganguly through his clerk has filed a supplementary affidavit annexing some documents including the said order of injunction.

On perusal of the said order, it appears that it is silent about the existence of the alleged entrance gate of the suit passage as well as the mode of usage of the said passage by the parties as on the date of the said order.

Whether the suit passage is for common usage of the plaintiffs and defendants is the main

issue to be decided in the suit, pending decision on the said issue, the relief which the plaintiffs are seeking by the said application under Section 151 of the Code would be amounting to pre-judge the said issue.

The learned Trial Judge, therefore, has not committed any error in dismissing the said application.

The order impugned, for the aforesaid reason does not call for any interference. C.O. 341 of 2018 is dismissed without any order as to costs.

The learned Trial Judge is requested to expedite the disposal of the suit and in doing so, shall not grant any unnecessary adjournment to either of the parties.

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.)