

07.03.2022
Ct. 21
D/L 154

C.O. 361 of 2022
(Via Video Conference)

Shuktisubhra Sahana & Anr.
-Vs-
Sri Tushar Kumar Koley & Ors.

Shila Sarkar, Adv.
Mr. Tanmoy Kukherjee, Adv.
Khaza Raihan Ahmed, Adv.

... for the petitioner

Mr. Apurba Kumar Ghosh, Adv.
Mr. Rudranil Ghosh, Adv.

...for the opposite party no. 1

Learned Counsel for both the parties are present.

The revisional application is taken up for hearing.

The present application under Article 227 of the Constitution India is at the instance of the petitioners/ defendants no.1 and 2 being aggrieved by the order of rejection of their application under Section 151 C.P.C and petition under Order 39 Rule 7 read with Section 151 C.P.C by the learned Civil Judge (Junior Division), 2nd Court, Burdwan in Title Suit No. 305 of 2020 on 7.02.2022.

The facts giving rise to the present revisional application in gist is that A schedule property was originally own by Shudhangsu Pada Hazra and his wife Smt. Aloka Hazra. That principal defendant no. 1 and

pro forma defendant nos. 3 and 4 are three children of the said original owners. While the plaintiff and defendant no. 2 are two sons-in-law of those original owners.

It is the case of the plaintiff he acquired interest over A(1) and A (2) schedule properties by virtue of purchase from his in laws vide registered sale deed no. 2215 for the year 2000. He has further alleged that his in-laws during their lifetime executed two registered will and appointed the defendant no.2 as an executor of the will. They bequeathed B schedule property in favour of their son/the defendant no. 3.

He has alleged that the defendant nos.1, 2 and 4 in collusion manufactured fake documents in respect of B schedule property.

He has also alleged that he constructed a dwelling house on his purchased of A(1) schedule property leaving schedule A(2) property vacant. That defendant no. 1 and 2 constructed dwelling house on B schedule property by encroaching A(2) schedule.

From material on record it appears that plaintiff has also obtained an ad interim order of injunction restraining defendant no. 1 and 2 from entering into A(2) schedule property, from raising any illegal construction or changing nature and character of A(2) schedule property which is part and parcel of A(1) schedule property.

It appears from the record that the defendant nos.1 and 2 after appearance have filed an application under Section 151 C.P.C. praying that they may be permitted to complete the plastering work of the western side wall of their residential house situated over B schedule property as due to injunction order their construction work has been stopped. By filling another application they have also prayed for local inspection of the B schedule property and to find out whether the construction in B schedule property is complete or not. The learned Court below by passing the impugned order has been pleased to reject both the applications with the finding that no injunction order has been passed in respect of B schedule property and as such the question of seeking permission of the Court to do plastering work on B schedule property is vague and redundant.

Now, let see whether the impugned order suffers from any illegality or irregularity?

Perused the ad interim injunction order dated 29.09.2020 and which shows injunction order was passed in respect of A(1) and (2) schedule property and not in respect of B schedule property.

On perusal of the schedule of the plaint, I find that A1, A2 and B schedule property to be a part and parcel of A schedule property appertaining to L.R. Plot No. 12087 measuring 0.010 acre and L.R. Plot No. 12088 measuring 0.050 acre both the plots recorded as

dwelling house and which the learned Court below appears to have overlooked and failed to take into consideration while passing the injunction order.

The defendants by filing impugned applications under Section 151 of CPC and Order 39 Rule 7 of CPC have prayed for permission to complete the plastering work of the western wall of their building and for local inspection of their building situated on B schedule property.

The main dispute between the parties appear to be in respect of Schedule A(2) property as plaintiff has alleged the defendants by encroaching his such land has raised construction on B Schedule property.

Therefore, this Court is of view until and unless the issue relating encroachment is decided by way of local investigation of the entire A schedule property it cannot be said whether the western wall of the defendants house is being built within their land described in Schedule B and without encroaching Schedule A(2) property. Thus, the defendants are bound by the order of injunction though the order is silent about B Schedule property. Therefore, this Court finds material irregularity in the impugned order and which is liable to be set aside.

Accordingly, **C.O. 361 of 2022 is disposed of.**

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)