

07.04.2022
Item No.23
Ct. No.7
CHC
(disposed of)

**C.O.671 of 2022
(Physical Hearing)**

**Sri Paresh Chandra Debnath alias Paresh Debnath
Vs.
Sri Arup Debnath & ors.**

Ms. Moumita Ghosh,
Mr. Sukumar Ghosh
...for the petitioner

The petitioner assails the appellate judgement passed in Misc.Appeal No.86 of 2016, thereby refusing to pass any injunction in favour of the petitioner.

Admittedly, learned trial court has already disposed of the prayer for temporary injunction declining to pass any injunction in favour of the petitioner. Against the decision of the trial court, an appeal was then carried, vide Misc.Appeal No.86 of 2016 of learned Additional District Judge, 3rd Court, at Barasat, wherein the trial court's judgement refusing to grant injunction has already been affirmed.

Learned advocate for the petitioner claims to be in possession of the suit property and prays for interim protection pending decision of the suit.

Upon perusal of the impugned judgement, it appears that the contention raised by the parties, as per impugned appellate judgement, may be best

decided upon collection of evidence to be adduced in the trial of this case.

The test of granting injunction by establishing a *prima facie* case favourable to grant of injunction has not been fulfilled by the petitioner seeking injunction. There is no express perversity shown in the impugned appellate judgement, occasioning thereby failure of justice. The appellate court has already passed order requesting the trial court to expedite the trial of the suit.

In view of the detailed discussions contained in the appellate judgement, while refusing to grant injunction, this Court finds no substance to interfere with the impugned appellate judgement. This would not, however, prevent the petitioner to seek appropriate relief before the court below to protect his possession, if there be any at all, after adducing evidence of some witnesses in support of the alleged possession of the suit property.

With this direction/observation the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)