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C.O. 1158 of 2022

**Sri Debarshi Bhuniya & Anr
Vs
Sri Manas Chandra Roy & Ors**

Mr. J. K. Bhattacharya,
Mr. Aswini Kumar Bera,
... For the petitioners.

The subject matter of challenge in this revisional application is against an appellate decision, passed in Misc Appeal No. 48 of 2015 dismissing the same, and thereby declining to interfere with an order of the trial Court dated 27th February, 2015 passed in Title Suit No. 68 of 2010, refusing to grant temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

Admittedly, the trial Court, after a contested hearing, was pleased to reject the prayer for temporary injunction, as proposed by the petitioners/plaintiffs in a suit for partition. The decision of the trial Court refusing to grant temporary injunction was carried in appeal vide Misc Appeal No. 48 of 2015, which was dismissed by the impugned order.

Mr. J. K. Bhattacharya, learned advocate appearing for the petitioners submits that plaintiffs/appellants are in exclusive possession of A schedule property. The B Scheduled property being part of the A Scheduled property has been encroached by the

defendants, learned advocate for the petitioners argues.

It is further submitted that there was a partition decree in a preliminary form granted upon declaring shares of the parties vide Title Suit No. 47 of 1977. After the share of the parties in such partition suit being declared in preliminary form, the share of all the co-sharers has been amicably settled thereafter. Even after amicable settlement of the shares, as per decree of the partition suit being Title Suit No. 47 of 1977, defendant Nos 7 to 11 proceeded to interfere with the exclusive possession of the plaintiffs/appellants in respect of A Scheduled property making encroachment in B Scheduled property, which is an integral part of A Scheduled property.

It is contended further by the learned advocate for the petitioners that First Lower Appellate Court has not duly exercised its authority upon duly considering the exclusive possession of the appellants/plaintiffs in respect of A and B Scheduled property, which happened long before, after the partition decree in preliminary form being granted in Title Suit no. 47 of 1977.

Upon perusal of the impugned order, it appears that the Court below was not prepared to accept that the suit property had been amicably partitioned after the preliminary decree was granted in Title Suit No. 47 of 1977 with due appointment of learned pleader commissioner to give effect to the preliminary decree.

The exclusive possession of the plaintiffs as such, was not considered by the First Lower Appellate Court as well as by the Court below.

Upon consideration of the order passed by the First Lower Appellate Court, it appears that it is reasoned one. Neither any express perversity is shown, nor established in the impugned order, without which it would not be wise to interfere with the order. There is nothing to reveal that there has been miscarriage of justice.

There is no justification to pass any interim order for the protection of alleged possession of appellants/plaintiffs, if there be any. The possession of the appellants, if there be any, may be best established with the production of evidence at the appropriate point of time.

In view of the nature of the order proposed to be made in the cases, no prior notice is considered to be necessary.

Service upon the opposite parties is thus dispensed with.

For the discussion made hereinabove, the impugned order does not call for any interference.

Upon consideration of long pendency of the matter before the Court below, Title Suit No. 68 of 2010 pending before the Court of learned Civil Judge (Junior Division), 1st Court, Paschim Midnapore may be

disposed of expeditiously providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, unless it is extremely unavoidable.

While endeavouring such exercise, petitioners are at their liberty to establish their exclusive possession, if there be any, over the scheduled property, even at the time of giving effect to the preliminary decree, already granted in this case, with the appointment of learned pleader commissioner.

Petitioners are directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite parties and the opposite parties as well.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)