

14.07.2022
(D/L-20)
Ct.-18
(Susanta)

C.O. 1315 of 2022

Bhuban Mohan Guin & Anr.
-Vs-
Smt. Jogmaya Das

Mr. Lutful Haque,
... For the Petitioners.

Mr. Mani Sankar Chattopadhyay,
Ms. Munmun Biswas,
.... For the opposite party.

Affidavit-of-service filed in Court today be kept
with the record.

The defendants 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 May 5,
2022 passed by the The 3rd Court of learned Civil
Judge (Junior Division), Serampore, District-Hooghly
in Title Suit No. 144 of 2019.

The learned Trial Judge by the order impugned
has dismissed an application filed by the petitioner
under Order VII Rule 11 of the Code of Civil
Procedure.

Mr. Haque, learned advocate for the petitioners
submits that the petitioners are the decree holders of
a decree of eviction passed in Title Suit No. 173 of
1998 and have put the said decree into execution in
Title Execution Case No. 1 of 2011. The plaintiff
although is in possession of one room at the
decreetal premises but the decree under execution is

not directed against her as such she should not be apprehensive of her dispossession.

Mr. Mani Sankar Chattopadhyay, learned advocate for the plaintiff/opposite party submits that if the possession of his client is protected, she will not proceed with the suit.

In view of such stand of the parties, C.O. 1315 of 2022 is disposed of with the following direction:-

(i) The petitioners shall file an undertaking in the Title Execution No. 01 of 2011 pending before the 1st Court of Learned Civil Judge (Junior Division) at Serampore District: Hooghly that the possession of the opposite party Smt. Jogomaya Das in respect of one room and enjoyment of common Verandah in the decreetal premises, as indicated in the sketch-map annexed to the report of the Commissioner, appearing at Page 51 of the revisional application, shall not be disturbed in execution of the decree passed in Title Suit No. 173 of 1998.

(ii) On filing of the said undertaking, the Title Suit No. 144 of 2019 pending before 3rd Court of learned Civil Judge (Junior Division) at Serampore, District-Hooghly shall stand dismissed on production of a copy thereof.

There shall be no order as to costs.

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.)