

**MAT 858 of 2022
With
CAN 1 of 2022
Bhai Bhai Fuel Station & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Joydeep Kar, Sr. Adv.
Mr. Amal Kumar Banerjee

... ... for the appellants

Mr. Srijit Chakraborty
Mr. Jisan Iqbal Hossain
Mr. Biswajit Sarkar

... ... for the respondent nos. 7 to 15

Mr. Nilotpal Chatterjee
Mr. Soumitra Mukherjee

... ... for the State

This intra-court appeal is at the instance of the appellants challenging the order of the learned Single Judge dated 18.05.2022 whereby WPA 6766 of 2022 has been disposed of taking note of the fact that the Civil Suit in respect of the property in question is pending and therefore observing that the parties can obtain appropriate orders from the Civil Court.

Learned counsel appearing for the appellants referring to various documents has submitted that the title of the appellants is not in dispute and the appellants have also got the requisite permission and licences and thereafter have set up a petrol-pump therein but there is resistance by the private respondents. Therefore they need police protection to operate the petrol-pump.

Learned counsel for the private respondents has pointed out that the Partition Suit No.217 of 2022 is already pending before the Civil Judge (Senior Division), Lalbagh, District-Murshidabad at the instance of the

private respondents wherein the present appellant no.2's father is one of the defendants. It has been pointed out that an application under Order 7 Rule 11 of the CPC at the instance of the present appellants is also pending.

The appellants are claiming right over the land in question on the basis of the lease executed by the appellant no.2's father in his favour.

In the above circumstances of the case, we are of the opinion that the proper remedy available to the appellants/appellant no.2's father is to file an appropriate application for temporary injunction in the pending Suit. It has been pointed out that one application for temporary injunction at the instance of the private respondents is already pending in the Civil Suit. An urgency has been shown by the learned counsel for the appellants by submitting that if the appellants are not allowed to operate the petrol-pump then there is a possibility that his licence may be cancelled by the Indian Oil Corporation.

In the above circumstances of the case, we dispose of this appeal by permitting the appellants/father of appellant no.2 to file an application for temporary injunction in the pending Suit and also make a prayer before the Trial Court for preponement of the date, to which the learned counsel for the private respondents has not objection.

Learned Trial Court on filing of the application for temporary injunction at the instance of the

appellants/father of appellant no.2 will make every endeavour to decide the said application along with another pending application for temporary injunction as expeditiously as possible, preferably within a period of two weeks from the date of filing of that application for temporary injunction on behalf of the appellants.

The decision on the said temporary injunction applications will be without prejudice to the rights of the parties in the application under Order 7 Rule 11 of the CPC.

We make it clear that we have not gone into and expressed any opinion on the merits of the case.

The appeal and the connected application are accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)