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Ct. 18
01.04.2022

**C.O. No. 1609 of 2016
With
C.O. No. 3594 of 2018**

**Rita Banerjee & Anr.
Vs.
Abdul Rahman & Ors.**

Mr. Sanjay Mukherjee ... For the petitioners.

These two revisional applications are arising out of the selfsame execution case between the same parties, as such, both the matters are taken up together for consideration and disposal.

Mr. Sanjay Mukherjee, learned advocate for the petitioners files affidavits-of-service, which are taken on record.

In spite of service none appears on behalf of the opposite parties.

The petitioners were the plaintiffs of Title Suit No. 47 of 1995. The said suit was decreed by declaring the right, title, interest of the petitioners over the suit properties and a decree of prohibitory injunction was also passed in the said suit by restraining the defendants from interfering with the possession of the plaintiffs over suit schedule 'C' property.

The petitioners alleging violation of the said decree of prohibitory injunction initiated the connected Title Execution Case No. 1 of 2013 before the Learned Civil Judge (Junior Division), 2nd Court at Hooghly. In the said execution case, the petitioners alleging dispossession in violation of the decree of injunction

have prayed for recovery of possession of the suit schedule 'C' property along with other ancillary reliefs.

The petitioners to demonstrate the alleged violation of the said decree of prohibitory injunction, in the said execution case filed an application under Order XXXIX Rule 7 of the Code of Civil Procedure for holding local inspection of the said 'C' schedule property.

The executing Court by the order impugned being Order No. 22 dated March 17, 2016 has dismissed the said application on the ground that there is a pending revisional application before this Court arising out of the previous execution case, the said order is under challenge in C.O. 1609 of 2016.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioners submits that the opposite parties, on an earlier occasion had violated the said decree of prohibitory injunction for which the petitioners had initiated an execution case prior to the present one and the matter referred to in the order impugned arose out of the said earlier execution case but the said matter since has already been dismissed for default, there is no impediment in the present execution case to consider the application filed by the petitioners for appointment of an Advocate Commissioner for holding local inspection of the suit property.

The sole ground for refusing the prayer of the petitioners for appointment of an advocate commissioner was the pendency of a matter before this Court, but the said matter since has already been dismissed as submitted by Mr. Mukherjee, the executing Court is required to decide the said application on merit.

In view of the aforesaid, the order no. 22 dated March 17, 2016 passed in the Title Execution Case No. 1 of 2013 is set aside.

On filing of the order of dismissal of the matter referred to in the order impugned, the Executing Court is requested to decide the said application afresh in accordance with law.

C.O. 1609 of 2016 is disposed of with the above terms without any order as to costs.

The petitioners have challenged the Order no. 30 dated July 12, 2018 passed in the said Title execution case No. 1 of 2013 whereby the executing Court decided to proceed with the said execution case in the absence of any order of stay being passed by this Court.

In view of the disposal of C.O. 1609 of 2016, the present matter has become infructuous, C.O. 3594 of 2018 is dismissed as such without any 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.)