

01.08.2022
Item No.23
Ct. No.7
CHC
(disposed of)

C.O.1607 of 2022

Smt. Rama Das & ors.
Vs.
Sri Puran Agarwal & ors.

Mr. Sibnath Ganguly
...for the petitioners

The subject-matter of challenge in this revisional application is against order dated 17th May, 2022, passed in Misc.Appeal No.35 of 2022 of learned Additional District Judge, 1st Court, Sealdah, South 24 Parganas, declining to grant any interim injunction.

Learned advocate appearing for the petitioners submits that the appellate court has not gone into the points raised and pressed, and thus there has been improper decision reached by the appellate court, while refusing the prayer for interim injunction.

Learned advocate appearing for the petitioners further contends that all the necessary documents standing in the name of the mother of the petitioners/appellants were produced in support of the case presented not only before the trial court, but also before the appellate court, that the dispute surfaced between the parties pertains to a common passage.

True it is that in a suit for declaration and injunction the prayer for ad interim injunction was refused by the trial court. The decision of the trial

court rejecting the prayer for injunction was carried in Misc.Appeal vide Misc. Appeal No.35 of 2022. The appellate court declined to grant any interim injunction by the impugned order.

Upon perusal of the impugned order, it appears that the first lower appellate court declined to pass any ad interim order of injunction, for want of production of any document, in proof of mutation of name of the petitioners in the record of the KMC being legal heirs of predecessor, mother of the petitioners, connecting the subject property now under challenge in this case.

Admittedly, the appeal is pending, and the matter was adjourned for securing appearance of the opposite parties after rejecting prayer for ad interim order of injunction.

The point now raises, this Court perceives may be best addressed by the first lower appellate court in the pending Misc. Appeal. There is no manifest error committed by the court below, while proceeding to reject the prayer for interim injunction, for absence of the required documents in due exercise of discretion of court below.

The petitioners/appellants at the time of hearing of the appeal may produce the required documents before the first lower appellate court at the time of hearing of this appeal.

All the points now raised by the petitioners/appellants may be raised before the first lower appellate court, and first lower appellate court is directed to resolve the issue permitting the petitioners/appellants to produce required documents connected with the disposal of pending Misc. Appeal, of the addressing the issue, providing sufficient hearing to either of the parties to this case. The pending Misc. Appeal, as such, may be expeditiously disposed of preferably before the ensuing Puja Vacation, irrespective of the rejection of prayer for injunction at the interlocutory stage in the appeal.

This order is passed without deciding the merits of the points raised and without prejudice to the rights and contentions of parties the case.

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

With this observation/direction, 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.)