

11.02.2022
(S/L-14)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 2043 of 2019

Smt. Antara Dutta
-Vs-
Porajoy Dutta & Ors.

Mr. Tanmay Mukherjee,
Mr. K. Raihan Ahmed,
.... For the Petitioner.

Mr. Tanmay Mukherjee, learned advocate appears on behalf of the petitioner and files affidavit-of-service which is taken on record.

None appears on behalf of the opposite parties in spite of service.

The plaintiff in a suit for partition being Title Suit No. 95 of 2016 pending before the learned Civil Judge (Senior Division) Kandi, Murshidabad is the petitioner of the present application under Article 227 of the Constitution of India.

The petitioner in the said suit filed an application under order XXXIX Rules 1 & 2 of the Code of Civil Procedure.

The learned Trial Judge vide Order No. 12 dated August 10, 2017 disposed of the said application by directing the parties to maintain the status quo in respect of nature, character and possession of the suit property till the disposal of the suit.

The defendant nos. 1 & 2 aggrieved by the said order preferred the connected Miscellaneous Appeal no. 20 of 2017.

The learned Additional District Judge, Kandi, Murshidabad by the order dated March 16, 2019 has allowed the said appeal and thereby set aside the order of the learned Trial Judge.

The said order of the appeal Court below is under challenge in the present application under article 227 of the Constitution of India.

Mr. Mukherjee, submits that the appeal Court below has committed error in setting aside the order of the learned Trial Judge on the ground that the plaintiff is not entitled to get interim order of injunction pending disposal of the suit as she has not prayed for a decree of permanent injunction.

Mr. Mukherjee is right in his said submission, to get an interim order of injunction the plaintiff is not required to pray for a decree of a permanent injunction.

However, on perusal of the application for injunction filed by the plaintiff in the suit, it appears that the appeal Court below has rightly held that the learned Trial judge should not have passed an order of injunction against all the parties to the suit since such order of injunction

was prayed for only against the defendant nos. 1 and 2.

That apart the plaintiff by the said application has not prayed for injunction in the form and manner granted by the learned Trial Judge.

The order impugned for the aforesaid reason does not call for any interference.

It is however made clear that this order will not prevent the plaintiff to take out appropriate application for injunction in the suit if situation so demands.

C.O. 2043 of 2019 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the party subject to compliance with all requisite formalities.

(Biswajit Basu, J.)