

06.09.2022
Item No.16
Ct. No.7
CHC
(disposed of)

C.O.1987 of 2022

**Sri Ashok Kumar Pradhan
Vs.
Sri Tarun Pradhan & ors.**

Mr. Gourab Ghosh
...for the petitioner

Ms. Debjani Deb,
Mr. Sanjit Kr. Mandal
...for the opposite parties

Petitioner has challenged the appellate decision, passed in Misc. Appeal no.04 of 2022, by learned Additional District Judge, 1st Court, Contai, Purba Medinipur, taking recourse to the provisions available under Section 21(1b) of the Bengal, Agra and Assam Civil Courts Act, 1887.

Admittedly, learned Civil Judge (Senior Division), 2nd Court, at Contai in Title Suit No.164 of 2022 refused the prayer for ad interim injunction on the prayer of the opposite parties/plaintiffs in a suit for partition. An appeal was then carried before the court of learned Additional District & Sessions Judge, Contai, against the rejection of the prayer for ad interim injunction.

It is submitted by the learned advocate for the petitioner that the court below in appeal without extending an opportunity of hearing to the petitioner,

instantly disposed of the Misc. Appeal granting restrain order against the petitioner from making any construction over the suit property mentioned in the schedule to the plaint. The attention of the Court is drawn to the total valuation of the suit at Rs.75,00,100/-.

It is contended by the learned advocate for the petitioner that making suppression of the facts, an appeal has been preferred before the learned Additional District Judge, which is contrary to the provisions mentioned in the Bengal, Agra and Assam Civil Courts Act, 1887.

Per contra, Ms. Debjani Deb, learned advocate appearing for the opposite parties/plaintiffs submits that petitioner is a cosharer, similar to that of the opposite parties, and in an undivided property, the petitioner has proceeded to raise construction without obtaining sanctioned plan, which according to the opposite parties, is not permissible.

Having considered the submission of both sides, it appears that the bone of contention between the parties in this case is erroneous assumption of jurisdiction of first lower appellate court, while admitting the Misc. Appeal against an order refusing ad interim injunction, passed by learned Civil Judge (Senior Division), 2nd Court, Contai. There cannot be any controversy between the parties, because there

may be an appeal preferred against an order passed by the learned Civil Judge (Senior Division) to the High Court as per provisions available in Section 21 (1b) of the Bengal, Agra, Assam Civil Courts Act, 1887. More so, the court below in appeal instantly disposed of the appeal without providing an opportunity of hearing to the petitioner/defendant in haste.

That being the position, the order passed in Misc. Appeal No.04 of 2022 is not sustainable. Accordingly, the same is set aside.

When the injunction application is pending, and learned advocate for the petitioner does not dispute with the receipt of notice of injunction, this Court is of the view that pending injunction application under Order 39 Rule 1 and 2 C.P.C. may be disposed of in an expeditious manner.

Petitioner is given liberty to file written objection against the injunction application within fortnight from the date of communication of this order to the court below, and the court below is directed to dispose of the pending injunction application within three weeks after the Puja Vacation of the Court below, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

This order is passed without going into the merits of the case, and without prejudice to the rights and contentions of the parties.

Both the parties are at their liberty to produce their respective case supported by document in connection with the hearing of injunction application, pending before the court below.

Parties are directed to make communication of this order to the court below.

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.)