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Ct. 18
31.03.2022

C.O. No. 1840 of 2021

Sankar Prasad Das

Vs.

Saraswati Mondal & Ors.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. D. Ganguly,
Mr. K. Bhattacharya ... For the petitioner.

Mr. Saunak Bhattacharya,
Mr. Saunak Mandal ... For the O.P. Nos. 1 to 3.

Mr. Partha Pratim Roy ... For the O.P. Nos. 4 & 5.

The revisional application although has come up in the list for 'Extension of Interim Order', but by the consent of the parties, the matter is taken up for final disposal.

The petitioner is the decree-holder of the decree of mandatory injunction passed in Title Suit No. 147 of 1993 by the 1st Court of learned Civil Judge (Junior Division), at Baruipur, District – 24 Parganas (South).

The petitioner put the said decree into execution which gave rise to Title Execution Case No. 9 of 2021. In the said execution case the opposite party nos. 1, 2 and 3 filed an application for determination of their independent right, title and interest over the suit property under Rule 101 of Order XXI of the Code of Civil Procedure.

The said application has been registered before the executing Court as Miscellaneous Case No. 12 of 2021.

The opposite party nos. 1 to 3 in the said miscellaneous case filed an application praying that pending disposal of the said Miscellaneous Case, the further proceedings of the said execution case be stayed.

The executing Court by the order dated February 26, 2021 refused to grant such stay.

The Opposite parties no. 1, 2 and 3 aggrieved by the said order preferred the connected Miscellaneous Appeal No. 10 of 2021 before the 1st Court of learned Civil Judge (Senior Division) at Baruipur, District – 24 Parganas (South).

The appeal Court below by the orders impugned has stayed the further proceedings of the said execution case.

The order refusing to grant stay of the execution case pending disposal of the said Miscellaneous Case No. 12 of 2021 is not open to appeal, therefore the appeal Court below should not have passed the order of stay of the execution case in aid of the said appeal.

The order impugned, for the aforesaid reason, is set aside. The Miscellaneous Appeal No. 10 of 2021 is dismissed as not maintainable.

This order however will not prevent the opposite party nos. 1, 2 and 3 to challenge the order dated February 26, 2021 passed in the Misc. Case No. 12 of 2021 in accordance with law.

C.O. 1840 of 2021 is allowed with the above terms 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.)