

04.03.2022
(S/L-10)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1881 of 2021

Nabin Kumar Kundu & Anr.

-Vs-

Nikhil Kumar Kundu & Ors.

Mr. Gopal Chandra Ghosh,

Mr. Rajkrishna Mondal,

.... For the Petitioners.

Mr. Srikrishna Samanta,

.... For the Opposite Parties.

The defendant nos. 1 and 2 in suit for declaration of title and injunction are the petitioners of the present application under Article 227 of the Constitution of India which is directed against the order dated August 31, 2021 passed by the learned Civil Judge (Senior Division) Arambagh, District Hooghly, in Miscellaneous Appeal No. 6 of 2021 thereby reversing the order no.23 dated June 19, 2021 passed by the 1st Court of learned Civil Judge (Junior Division), Arambagh in the Title Suit No. 04 of 2020.

The plaintiffs/opposite parties in the suit filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure praying that the defendants be restrained by an appropriate order of injunction from changing the status quo in respect of the L.R.R.O.R of the suit plots or from further proceeding with the R.C. Case No.

123 of 2019 pending before the BL & LRO Goghat-I or from interfering with the peaceful possession of the plaintiffs over their 7/8th share in the suit properties or from changing the nature and character of the suit properties.

The learned Trial Judge by the order no. 23 dated June 19, 2021 dismissed the said application.

The plaintiffs/opposite parties aggrieved thereby preferred the connected Miscellaneous Appeal.

The Appeal Court below by the order impugned has reversed the order of the learned Trial Judge and allowed the application for injunction filed by the plaintiffs/opposite parties by directing the parties to the suit to maintain status quo in respect of the existing possession of the parties till the disposal of the suit.

On perusal of the plaint, it appears that the plaintiffs in the suit have prayed for a decree of declaration simpliciter in respect of their shares in the joint properties instead of seeking partition of their said shares. The suit, as it is framed, is clearly barred under the proviso appended to Section 34 of The Specific Relief Act, 1963.

The suit being not maintainable on the face of it, no order of injunction can be granted in aid of the said suit.

The order impugned, for the aforesaid reason is not sustainable and is accordingly set aside.

This Court is informed by the learned counsel for the parties that trial of the suit has not yet commenced.

Plaintiffs/opposite parties are at liberty to take steps for amendment the plaint of the said suit, if so advised.

C.O. 1881 of 2021 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 parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)