

16.02.2022
(S/L-12)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 2633 of 2019

Smt. Manjusree Dutta & Anr.
-Vs-
Sri Amal Das & Ors.

Mr. Debjit Mukherjee,
Mr. Kaustav Bhattacharya,
.... For the Petitioners.

Mr. Kaustav Bhattacharya, learned advocate for the petitioners, files affidavit-of-service which is taken on record.

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

The plaintiffs in a 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 order no. 25 dated June 24 , 2019 passed by the 4th Court of learned Civil Judge (Junior Division), Alipore in the said suit being Title suit No. 378 of 2017.

The petitioners in the said suit filed an application under Section 151 of the Code of Civil Procedure for restoration of their possession over the suit property on the allegation that the defendants in violation of the subsisting order of injunction passed in the suit have dispossessed them.

The learned Trial Judge by the order impugned has dismissed the said application.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioner, submits that the petitioners have been wrongfully dispossessed from the suit property in violation of the order of injunction, as such, the learned Trial Judge in exercise of his inherent power under Section 151 of the Code should have restored possession of the petitioners over it. In support of such contention, he refers to the following judgments of the learned Single Judges of this Court.:-

1. In the case of *Hashen Seikh & Ors. vs. Asura Bibi & Ors.* reported in 2019 (1) ICC 74 (Cal.)

2. In the case of *Manash Kumar Maji & Ors. vs. Suman Maji & Ors.* reported in 2019(1) ICC 829 (Cal).

Heard Mr. Bhattacharya, perused the materials-on-record.

In the suit, the possession of the parties over the suit property is in dispute. The learned Trial Judge did not find any material to hold that as on the date of order of injunction or prior thereto the petitioners were in possession over the suit property and under such facts and circumstances of the case, refused to grant the relief as prayed for in the said application at that stage.

There is no dispute in the proposition of law laid down in the cited judgments that the Court can restore the possession of a party to the suit who has been dispossessed from the suit property in violation

of the order of injunction but the said proposition of law has no manner of application in the facts and circumstances of the present case.

This Court does not find any illegality and/or infirmity in the order impugned warranting interference.

It is however made clear that this order shall not prevent the petitioners from seeking appropriate relief in the suit for restoration of their possession over the suit property subject to proof that they were in possession prior to the said order of injunction passed in the suit.

The learned Trial Judge is requested to dispose of the application for injunction expeditiously, if the same is still pending.

C.O. 2633 of 2019 is disposed of with the above observations 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.)