

23.11.2022
Item No.19
Ct. No.7
CHC
(disposed of)

C.O.2230 of 2022

Sri Bablu Debnath & ors.
Vs.
Sri Srimanta Debnath & ors.

Mr. Soumik Ganguli,
Ms. Ankita Pradhan
...for the petitioners

Mr. Biswajit Sau
...for the opposite party no.1

Rejection of prayer for stay in Misc. Appeal No.03 of 2022, arising out of Title Suit No.159 of 2022, by learned Additional District Judge, 2nd Court, at Contai, against the order granting *status quo* passed by the trial court is under challenge.

Mr. Ganguli, learned advocate appearing for the petitioners, while assailing the impugned order, submits that a collusive suit has been instituted by the opposite parties/plaintiffs, where there has been an injunction order granted without truly adhering to the facts, pertaining to the construction already undertaken by the opposite parties/defendants with respect to the suit property.

It is thus submitted by Mr. Ganguli that rejection of a prayer for stay is not upon due consideration of the materials placed in the record, supported by documents, and proposes for granting protection so

that the pending construction may be proceeded ahead.

Per contra, Mr. Sau, learned advocate appearing for the opposite party no.1/Caveator/respondent submits that both the appellants and respondent no.1 having admitted their extent of share in 'A' schedule property, which is a part and parcel of 'Ka' schedule property, there is necessity of preservation of the suit property till the decision of the suit, and thus supporting the order of the court below, it is submitted by the opposite party no.1 that there lies nothing to be interfered with the order of *status quo* passed by the trial court.

The instant appeal filed in connection with Misc. Appeal No.03 of 2022 is admittedly against the ad interim order of injunction granted by the trial court.

As per submission disclosed by the parties to this case, the next date before the court below in appeal is scheduled on 3rd December, 2022. The opposite party no.1/respondent has already entered his appearance in the pending appeal, referred hereinabove.

In a situation like this, it would be not wise to interfere with the impugned order at this stage, when the date before the court below in Appeal is fixed on 3rd December, 2022, in Misc. Appeal No.03 of 2022.

Regarding the institution of a collusive suit, it is however, strongly denied by the opposite party.

The issue regarding collusively instituted suit may be best decided by the court below. The appeal is thus disposed of without entering into the merits of the case, and without prejudice to the rights and contentions of the parties. The pending appeal may be disposed of expeditiously as possible, preferably before the end of March, 2023, if the appeal could not be taken up on the next scheduled date, for any reasons whatsoever.

Petitioners are given liberty to raise all the points disclosed in this petition, which may be addressed by the court below within the peripheries of Misc. Appeal, providing an opportunity of hearing to both the parties.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to communicate 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.)