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18.04.2022

C.O. No. 4038 of 2019

Aynur Molla
Vs.
Abu Taleb Molla & Ors.

Mr. Samim Ahammed,
Ms. Ambiya Khatun ... For the petitioner.

Mr. Anirban Mitra,
Mr. Amit Halder,
Md. Wasim Akram ... For the opposite party no. 1.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for declaration of title and injunction being Title Suit No. 24 of 2014 pending before the 2nd Court of learned Civil Judge (Junior Division) at Basirhat, District – 24 Parganas (North).

In the said suit the plaintiff, the opposite party no. 1 herein, filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure which the learned Trial Judge dismissed by the Order No. 38 dated January 06, 2017.

The plaintiff aggrieved by the said order preferred the connected Miscellaneous Appeal No. 05 of 2017.

The appeal Court below by the order impugned being order dated September 30, 2019 has allowed the said appeal thereby has directed the parties to the suit to maintain status quo in respect of the suit property till the disposal of the said suit.

The Hon'ble Supreme Court in the case of *Kishore Kumar Khaitan & Anr. vs. Praveen Kumar Singh* reported in (2006) 3 Supreme Court Cases 312 has deprecated passing of an order of status quo without indicating what the status quo was.

The aforesaid *dictum* of the Hon'ble Supreme Court renders the order impugned unsustainable and is accordingly set aside.

The appeal Court below is requested to decide the said appeal afresh in accordance with law.

In view of the nature of the order under challenge in the said appeal the appeal Court below is requested to dispose of the said appeal as expeditiously as possible preferably within two available effective working months of his Court from the date of communication of this order and in doing so shall not grant any unnecessary adjournment to either of the parties.

It is made clear that this Court has not gone into the merit of the said appeal, it is for the learned appeal Court below to decide the same.

In the event for any unforeseen reason, the appeal is not disposed of within the time stipulated by this order, the plaintiff/appellant shall be at liberty to apply before the appeal Court below for an interim order of injunction.

It is also made clear that pendency of the said appeal will not deter the learned Trial Judge to decide and dispose of the pending interlocutory applications in accordance with law.

C.O. 4038 of 2019 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.)