

S/L 1
10.11.2022
Court No.1
*Sourav/
Suvayan*

**IN THE HIGHCOUR AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION**

CO 37 of 2022

**Gopal Chandra Das @ Chowdhury & Ors.
Vs.
Bibhuti Das**

*Mr. Arjun Chowdhury
Ms. Pratusha Dutta Chowdhury
Mr. Bikash Singha*

...for the petitioners.

Heard the learned Counsel for the petitioners.

The affidavit-of-service along with tracking report filed in Court today be kept with the record.

Despite service of notice on two occasions, the opposite party chose not to appear. The service being held to be sufficient, the matter is taken up on the motion by learned Counsel for the petitioner.

From the impugned order, it is found that learned Court below by a composite order has disposed of petition filed by the plaintiff under Order 39 Rule 1 and 2 read with Section 151 CPC and the petition filed by the defendants under Section 151 CPC. The order reads thus:-

“.....that, the petition u/o 39 rule 1 and 2 r/w Sec. 151 of C.P.C. dated 21.10.2020 of the plaintiff and the petition u/s 151 of C.P.C. dated 23.12.2020 of the defendants be and the same are allowed on contest to the extent

of asking both the parties to the suit to ensure preservation of the existing features of the suit property and common use of the gate for ingress into and egress out of the suit property till the disposal of the suit.”

From the aforesaid order, it is clear that, i) existing feature of the suit property shall be preserved and ii) the gate of the suit property for common use of ingress into and egress out of the suit property shall be maintained till disposal of the suit.

By the self-same order a commissioner was appointed to inspect the house and a report is stated to have already been received in the meantime which goes to indicate that the common gate has been locked.

The grievance of the present petitioners who are defendants before the Court below is that in spite of such clear order by the learned Court below, the plaintiffs have put lock on the common gate and the defendants are suffering for such act of the plaintiffs. It is further submitted by the learned Counsel for the petitioners that the property is a species of family property and the parties are members of the same family and they are stated to be residing in the house since forty years.

It is submitted by learned Counsel for the petitioners that the plaintiffs are misinterpreting the

order passed by learned Court below and they have, in one way injuncted the present petitioners so far as ingress into and egress out of the suit property is concerned.

Regard being had to the aforesaid facts and submissions and specifically the language in which the impugned order has been clearly couched, I deem it just and proper to direct the petitioners to file an appropriate petition before the Court below for clarification of the order to the extent that neither the order passed by the Court below empowered the plaintiff to injunct the defendants nor that order empowered the defendants in any way to misuse the extent of liberty given by the order.

Accordingly, the application is disposed of with the aforesaid observation. On appropriate petition being filed by the petitioners with service of copies thereof on the plaintiff/opposite party, the petition shall be heard on its own merit in accordance with law and shall be disposed of within a period of one month from the date of its filing. Till the disposal of such application the opposite party should allow the petitioners to use the gate in accordance with the order passed by the learned Court below.

The revisional application being **CO 37 of 2022** is accordingly disposed of.

(Chitta Ranjan Dash, J.)