

04.10.2023
Sl. No.5(DL)
srm

C.O. No. 162 of 2023
Tapan Kumar Maity
Versus
Naran Chandra Maity & Ors.

Mr. S. Das,
Mr. K. Sahoo

...for the Petitioner.

Mr. Srinjan Sengupta,
Mr. Saurav Roy,
Mr. Narottam Acharyya

...for the Opposite Party
Nos.2, 3, 4, 6 & 8.

Affidavit-of-service is taken on record.

The revisional application arises out of an order dated December 2, 2022 passed by the learned Civil Judge (Senior Division), 2nd Court, Contai, Purba Medinipur.

By the said order, an application under Section 151 of the Code of Civil Procedure for police help had been rejected by the learned court below. The proceeding arose out of Title Suit No.410 of 2022. The suit is for partition. The allegation was that during the pendency of an ad interim order, the opposite party Nos.1 to 5 were raising a new construction. Such construction was in violation of the ad interim order. In the application, the petitioner contended that the learned court below had restrained the defendant Nos.1 to 5 in the suit from

changing the nature and character of the 'Ka' schedule property. Despite the said order, the construction was continuing. The petitioner also lodged a complaint with the local police authorities.

The learned court below found that the order of ad interim injunction was granted on November 17, 2021 and the petitioner was unable to indicate the real picture in the locale, to substantiate his allegation against the defendant Nos.1 to 5 with regard to change in the nature and character of the 'Ka' schedule property. The learned court below did not find any reason to pass any orders. The court was of the further view that the petitioner was always at liberty to file an application for violation of the order of injunction.

In my view, the petitioner was required to give further details indicating how the ad interim order of injunction had been violated. A general diary before the police authorities may not be a complete reflection of the real picture. However, this Court does not agree with the view of the learned trial Judge to the extent that the remedy of the petitioner was to file an application alleging violation of the injunction order. The learned court below was competent enough to pass necessary orders under Section 151 of the Code of Civil Procedure to

ensure implementation of an order of ad interim order, with the help of the police.

However, as it is informed that the interim order has been made absolute and the defendant Nos.1 to 5 have been restrained from changing the nature and character of the 'Ka' schedule property, this Court is of the view that the said order should be complied with in its letter and spirit by all the parties. However, if in future a situation arises where the petitioner is required to bring on record alleged violation of the order of injunction, the petitioner will be at liberty to approach the learned court below by filing necessary applications.

However, it is assured by Mr. Sengupta, learned Advocate for the opposite party Nos.2, 3, 4, 6 and 8 that the opposite parties/concerned defendants are not changing the nature and character of the 'Ka' schedule property and they are abiding by the order of injunction.

It is also made clear that this is a partition suit and no party can claim any equity in respect of any construction on the property.

However, the suit should be expedited as all the parties will stand to gain if their shares are declared, in accordance

with law. The preliminary decree should be passed within six months from the date of communication of this order.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)