

12.06.2023
Sl. No.11(DL)
srm

C.O. No. 181 of 2023

Md. Yasin Ali

Versus

Saridul Islam & Ors.

Mr. Shreen Hossain,

...for the Petitioner.

Mr. Kushal Chatterjee,

Mr. Debrup Choudhury

...for the Opposite Parties.

The revisional application is not maintainable in view of the fact that aggrieved by the same order which is impugned before this Court dated December 3, 2022 passed in Misc. Appeal No.8 of 2019 by the learned Civil Judge (Senior Division), Kandi, Murshidabad, the petitioner has also filed a recalling application before the learned lower appellate court and the same is pending.

By the order impugned, the learned lower appellate court rejected an application for injunction thereby upholding the order passed by the learned trial judge. Both the courts, *prima facie*, found that the petitioner did not have any right, title and interest over the property in question going by the title deed and documents produced by the sub-registry office.

The contentions of the petitioner are as follows:

- (a) The learned courts below failed to appreciate that in case the nature and character of the suit property was changed or if the property was alienated by the defendants, the suit would become infructuous.
- (b) An order of *status quo* was necessary in order to reduce multiplicity of proceedings.
- (c) The learned lower appellate court did not allow any opportunity to the plaintiff to file a written objection to the application under Order I Rule 10 of the Code of Civil Procedure.

The contention of the learned Advocate for the petitioner that the heirs of the deceased defendant No.2 could not have been added as a party is not accepted by the Court. The defendant No.2 was contesting the suit and hence upon his demise his heirs and legal representatives could be added as defendants.

With regard to the merits of the order passed in the misc. appeal, this Court is not inclined to pass any order at this stage and the petitioner is at liberty to pursue his case before the learned court below.

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.)