

S/L 2
26.06.2023
Court. No. 29
Sourav

CO 365 of 2019

**M/s. Arch Infra Properties
Private Limited & Ors.
Vs.
Smt. Anita Dey & Anr.**

*Mr. Siddhartha Banerjee
Mr. Mainak Chandra
Ms. Soni Ojha
Ms. Sonia Nandi*

...for the petitioners.

*Mr. Jishnu Chowdhury
Mr. Arif Ali*

...for the opposite parties.

1. Both the parties are represented by their respective learned advocates.
2. At the time of hearing the instant revisional application as filed challenging the impugned order dated December 20, 2018 passed by the learned Additional District Judge, 4th Court at Barasat, North 24 Parganas, in Misc. Appeal No. 115 of 2016, Mr. Banerjee, learned advocate for the revisionist/defendant at the very outset draws attention of this Court to the prayer portion of the plaint of Title Suit No. 496 of 2015 as filed before the learned Civil Judge (Junior Division), 1st Court at Barasat.
3. It is submitted by Mr. Banerjee, learned advocate for the revisionist/defendant that from the prayer portion of the plaint it would reveal that the plaintiffs/opposite parties have not claimed any right of easement over the suit property and on the contrary, they have claimed their undivided right over the same. Mr. Banerjee then draws

attention of this Court to the injunction application as filed before the learned trial Court which has been made annexure with the mark 'B' to the instant revisional application. It is submitted by Mr. Banerjee that in the prayer portion of the injunction application as filed under Order 39 Rules 1 and 2 in Title Suit No. 496 of 2015 the plaintiffs/opposite parties herein has equally no claimed any easement right.

4. It has been pointed out by Mr. Banerjee, learned advocate for the petitioners/defendants that while disposing Misc. Appeal No. 115 of 2016 by the impugned order, learned trial Court passed a restraint order against the petitioners/defendants herein directing the present opposite parties herein from raising any construction over the suit property so that right of easement of the plaintiffs/opposite parties may not be infringed.
5. Learned advocate for the plaintiffs/opposite parties, however, contended that the plea of right of easement of the plaintiffs are there in the plaint as well as in the injunction application.
6. Regard being had to such facts and circumstances as well as the submissions as made at the Bar, this Court is of considered view that learned first appellate court while passing the impugned order ought to have come to a *prima facie* finding with regard to the alleged title of the plaintiffs over the suit property i.e., whether the alleged title of the plaintiffs over the suit property is easementary or absolute in nature, if there be at all.

7. Such being the position, this Court considers that it is a fit case for remand of the instant matter.
8. Accordingly, it is ordered that learned Additional District Judge, 4th Court at Barasat, North 24 Parganas shall hear out Misc. Appeal No. 115 of 2016 afresh after giving opportunity of hearing to the learned advocates for the appellants as well as the respondents therein and to come to a logical conclusion to the said appeal keeping in mind the observation as made hereinabove.
9. However, considering the fact that Misc. Appeal No. 115 of 2016 is pending for a considerable length of time, learned Additional District Judge, 4th Court at Barasat, North 24 Parganas is hereby directed to dispose of the Misc. Appeal No. 115 of 2016 positively within a period of two months from the date of communication of this order. **It is made clear that the time limit as fixed by the learned trial Court is mandatorily be followed by the learned first appellate court.**
10. It is also made clear that till disposal of Misc. Appeal No. 115 of 2016, the interim order as passed in favour of the plaintiffs/opposite parties herein shall remain in force.
11. With the observation made hereinabove, the instant revisional application being **CO 365 of 2019** is disposed of after setting aside the impugned judgment dated 20.12.2018 as passed in Misc. Appeal No. 115 of 2016 by Additional District Judge, 4th Court at Barasat, North 24 Parganas.

12. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)