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RUP
Ct
237

27.02.
2023

C.O. 501 of 2023

**Sri Dhrubaram Kanu
Vs
Sri Jagneswar Chakraborty & Anr.**

Mr. Tanmoy Mukherjee, Adv.
Mr. Souvik Das, Adv.
Mr. Rudranil Das, Adv.

... For the petitioner.

Mr. Krishna Das Podder, Adv.
Mr. Dilip Kumar Shyamal,
Mr. Kaushik Banerjee, Adv.

... For the opposite parties.

This application under Article 227 of the Constitution of India has been filed challenging the order dated 30th January, 2023 in connection with Title Suit No. 63 of 2007 whereby learned Judge rejected the application for police help filed by the plaintiff/petitioner and directed to file an application under Order 39 Rule 2A of the Code of Civil Procedure for adjudication of the issue of violation. By that order learned Judge allowed the prayer for police help in favour of defendants/opposite parties to make construction on a plot being No. 147, directing Officer-in-Charge Debra Police Station to take necessary steps for providing preservation of the order dated 28.05.2008 passed in connection with Misc. Appeal No. 115 of 2007.

Mr. Tanmoy Mukherjee, learned advocate appearing on behalf of the petitioner/plaintiff has submitted about encroachment of schedule property by the defendants and in support of his contention Mr.

Mukherjee referred to investigation report filed by the Investigating Commissioner.

On the other hand, Mr. Krishna Das Podder, learned advocate appearing on behalf of the defendants/opposite parties has submitted that defendants have been making construction on the plot No. 147, which has no bearing with the scheduled plot. It has been further contended by Mr. Podder that at the time of making construction pursuant to the order of the Appellate Court, some disturbance was caused and that is why defendants/opposite parties filed an application for police help, which was allowed by the learned Trial Judge.

Mr. Podder has reiterated that the defendant is making construction on the plot No. 147 in view of the order passed on 28th May, 2008 in connection with Misc. Appeal No. 115 of 2007.

In the aforesaid view of the matter, it comes to my view that the issue of this case is that whether defendants/opposite parties has made any encroachment over the suit plots being No. 146 and 146/1835 and it also comes to my view that learned Trial Court could not find any scope to adjudicate the issue of encroachment as no application under Order 39 Rule 2A of the Code of Civil Procedure was ever filed by the plaintiff/petitioner..

In this circumstances, I do not find any reason to

interfere with the order dated 30.01.2023 passed by the learned Civil Judge (Junior Division), 3rd Court, Paschim Medinipur.

Therefore, plaintiff/petitioner is at liberty to file an application under Order 39 Rule 2A of the C.P.C. before the Trial Court for adjudication of issue of encroachment.

Learned Trial Court is requested to dispose of the application, if filed, as expeditiously as possible.

Though defendants is at liberty to raise construction specifically within plot No. 147, but not to encroach any land of plots No. 146 and 146/1835.

Petitioner is directed to make communication of this order to the learned Civil Judge (Junior Division), 3rd Court, Paschim Medinipur for information.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)