

S/L 69
13.02.2023
Court No.652
SD

CO 864 of 2020

Sk. Lal Mohammad & Ors.
Vs.
Sk. Matilal Ali & Ors.

Mr. Nilanjan Adhikari

...for the Petitioners.

Mr. Debdutta Basu

...for the Opposite Party No.4.

Being aggrieved and dissatisfied with the order no.24 dated 27.9.2019 passed by the learned Civil Judge (Junior Division), Uluberia, Howrah in Title Suit No.544 of 2016, present revisional application has been preferred.

The petitioners contended that the suit property belongs to plaintiff. On December 11, 2016 the opposite parties along with their men and agents forcibly entered into the suit land and for which plaintiff filed a suit for permanent injunction against the opposite parties before the court below. The plaintiff also filed an application for temporary and adinterim injunction and defendants/opposite parties contested the same by filing written objection. Learned court below after hearing was pleased to grant ad interim order of injunction against the opposite parties.

The petitioners submit that they filed an application under Section 151 of the Code of Civil Procedure seeking permission to raise construction upon the suit property.

By the impugned order, the learned court below rejected the said prayer for raising construction on the ground that plaintiff has not prayed for any local inspection commission and the application does not contain any specification as to the nature and extent of the repair work that is sought to be undertaken by the plaintiff as well as no description of the said house upon the schedule property. Learned court below also pleased to observe that plaintiffs have prayed for replacement of the tile shed roof by concrete roof which appears prima facie to alter the nature and character of the schedule premises altogether.

I have gone through the application for raising construction upon the suit property which was filed by petitioner before the trial court and it appears that in the said application he contended that the dwelling house of the plaintiff has been dilapidated and for which new construction is required to be made upon the suit property by brick built having pacca roof. In the said application, there is no mention of making any repair work and in the prayer portion permission was sought for before the trial court for raising new construction. No detailed description of the work has been given in the said petition. Learned counsel for the petitioners contended that subsequently local inspection has been held.

However, considering the nature of prayer made in the application, I do not find any reason to interfere with the order impugned.

Accordingly, CO 864 of 2020 is hereby dismissed.

However, this dismissal order will not preclude the plaintiffs/petitioners to make fresh application before court below without reserving any right to claim equity in future and in the event of filing such application by the plaintiffs/petitioners, disclosing details of the nature of work sought to be carried out, the court below will consider the said application on merit and will pass appropriate order without being influenced by any of the observations made in this application.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)