

18.4.2023
18
Ct. no. 652
sb

CO 665 of 2021

Samir Dey & Ors.
Vs.
Sri Netai Debnath & Ors.

Mr. Kaushik Dey
Mr. Prabir Adhya
Ms. Madhumanti Chakraborty ...for the petitioners

Mr. Achyut Basu
Ms. Punam Basu
Ms. Phitha Biswas ...for the O.P. nos. 1 to 3

Affidavit of service filed by the petitioners is taken on record.

Challenging the order dated 10.12.2019 and order dated 23.2.2021 passed by the learned Civil Judge (Junior Division), Nabadwip, Nadia in Title Execution case no. 10 of 2019 arising out of Title Suit no. 134 of 2001 in a suit for khas possession under Section 6 of the Specific Relief Act, the present application under Article 227 of the Constitution of India has been preferred by the petitioner.

Learned counsel for the petitioners submits that the plaintiff/opposite party herein filed aforesaid suit for khas possession under Section 6 of the Specific Relief Act claiming their ownership of the scheduled property through purchase by registered deed dated 30.4.2001. Father of the present petitioner being the defendant of the said suit filed written statement denying all allegations

and it is their specific case that the suit property is a debattar property and not a secular property and it is also denied that the opposite party no. 1 was in possession of the suit room. The said suit was decreed in favour of the plaintiff/opposite parties. The petitioners preferred revisional application before this court against the said judgment and decree dated 16.1.2019 and after hearing both the parties, this court granted liberty to the petitioner to file regular civil suit and/or exhaust other remedies available to the petitioners. Pursuant to the said order, the petitioners filed T.S. 136 of 2019 wherein they have also filed petition for injunction and learned court, after hearing, was pleased to grant ad interim order of status quo in respect of the nature, character and possession of the “kha” schedule property.

In the meantime, the opposite party herein filed aforesaid Title Execution case no. 10 of 2019 in connection with aforesaid T.S. 134 of 2001. In the said execution proceeding, the petitioners herein filed an application under Section 47 of the Code of Civil Procedure and they have also filed an application for stay of the execution proceeding of the said decree till disposal of the petitioner's application under Section 47 of the Code of Civil Procedure being Misc. case no. 22 of 2019. After hearing the submissions made by both the parties, learned court below was pleased to reject the application for stay dated 10.1.2019.

Learned counsel for the petitioners submit that the court below was erred in rejecting the petitioner's application for stay. Learned Court below did not consider the order of status-quo over the self-same property in connection with Title Suit no. 136 of 2019. In fact, if the execution proceeding is allowed to be continued, the application filed by the petitioners under Section 47 read with Section 151 of the Code of Civil Procedure will become infructuous. Learned court below ought to have disposed of the Misc. case no. 22 of 2019 under Section 47 of the Code of Civil Procedure before proceeding with the Execution case Accordingly, he has sought for setting aside the order impugned.

Learned counsel for the opposite parties submits that there was no stay in proceeding with the execution case by any court of law and as such the court below was justified in proceeding the execution case. The petitioners have filed said application only to drag the proceeding. Accordingly, she submits that the order impugned does not call for any interference.

I have considered the submissions made by both the parties. On perusal of the impugned order dated 10.12.2019, it appears that the court below was of the view that if the proceeding of the execution case is stayed in the absence of any formal order from the appellate forum, the decree-holder will have a cause to prejudice and he will be deprived from enjoying the fruits of the

decree. Unfortunately, the learned court below has not stated anything about the disposal of the Misc. case being no. 22 of 2019 under Section 47 read with Section 151 of the Code of Civil Procedure.

In view of above, C.O. 665 of 2021 is hereby disposed of with a direction upon the learned court below to dispose of the Misc. case under section 47 of the code within a period of eight weeks from the date of communication of the order and let there be a stay of all further proceedings of the execution case being Title Execution case no. 10 of 2019 for a period of eight weeks from the date of communication of this order or till disposed of the Misc. Case No. 22 of 2019 whichever is earlier.

Accordingly, C.O. 665 of 2021 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)