

13.12.2023
Court No. 19
Item no.03
CP

C.O. No. 1395 of 2022

Sri Samir Ghosh & Ors.

Vs.

Sri Nirmal Ghosh & Ors.

Mr. Nilanjan Bhattacharjee

.....for the petitioners.

Mr. Tanmoy Mukherjee

Mr. Souvik Das

Mr. Rudranil Das

Mr. Soumava Santra

....for the opposite parties.

The revisional application has been filed by the plaintiffs in Title Suit No.56 of 2017, being aggrieved by an order dated May 6, 2022, passed by the learned Civil Judge (Senior Division), Uluberia, Howrah.

It is contended that the learned court refused to take up the application filed under Section 151 of the Code of Civil Procedure, seeking police help for raising a construction on the strength of an interlocutory order passed by the learned Trial Judge which was affirmed upto the High Court. As the defendants were allegedly interfering with the alleged construction and thereby violating the order of injunction, police help was prayed for. It is further contended that unless the plaintiffs are allowed to raise the construction with the help of the police, the

order of injunction granted in favour of the plaintiffs, would be rendered futile.

Mr. Bhattacharjee, learned advocate for the petitioners, has relied on the decision of the High Court, which is annexed at page 83 of the revisional application. It appears that the learned coordinate Bench affirmed the order by which the plaintiffs were allowed to carry out the proposed construction over the suit property, by sufficiently safeguarding the interest of the defendants and with an additional condition that the plaintiffs would not claim any equity in respect of such construction.

Thus, there is no doubt that the right of the plaintiffs to construct, after abiding by the conditions imposed by the courts had been recognized by the High Court, as well.

Mr. Mukherjee, learned advocate appearing on behalf of the opposite parties, who are the defendants in Title Suit No. 56 of 2017, submits that by an order dated January 29, 2019 passed in C.O. No. 319 of 2019, another learned coordinate Bench had directed that Title Suit No. 56 of 2017 be tried analogously with Title Suit No. 299 of 2017. He submits that Title Suit No. 299 of 2017 was instituted by one of the co-sharers who claimed partition. The plaintiffs/petitioners are parties to the said suit, as they are also co-sharers. The

plaintiffs/petitioners are yet to enter appearance in the said suit. The said order of the learned coordinate Bench has been annexed to the revisional application at pages 86 to 88 thereof. The prayer of the opposite parties, for transfer of the suit to the same court where Title Suit No. 56 of 2017 was pending and for analogous hearing of the two suits, was allowed in C.O. 319 of 2019. It is further contended that in the Title Suit No. 299 of 2017 an ad interim order of injunction had been passed directing all the defendants therein, to maintain status quo with regard to the nature and character of the property in question. Thus, according to him, the learned Trial Judge was not in a position to pass orders on the application seeking police help for raising the construction, which was permitted at the stage of temporary injunction in Title Suit No. 56 of 2017.

Thus, there are conflicting orders in the two suits. In one suit there is an order of temporary injunction allowing the petitioners to raise construction, subject to the conditions that they will not claim any equity and not create any disturbance to the defendants. In the other suit, there is an ad interim injunction directing the parties to maintain status quo with regard to the nature and character. Apparently, these two conflicting decisions have

become an impediment for the learned court below to pass necessary orders in the application for police help.

Under such circumstances, this court is of the view that unless the order passed in Title Suit No. 299 of 2017, directing the parties to maintain status quo is vacated or modified, it would not be possible for the court below to pass necessary orders for police help.

Hence, the order impugned is modified to the extent that the petitioners will be permitted to file an application under Order 39 Rule 4 of the Code of Civil Procedure, for modification, variation and vacation of the ad interim order of injunction passed in Title Suit No. 299 of 2017. The said application shall be disposed of upon hearing the petitioners, the plaintiff therein and other contesting parties.

The application for police help is thus, disposed of at this stage, permitting the petitioners to file a similar application if the situation so demands. The application for modification will be decided within a period of two months from the next date fixed.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)