

S/L 66
30.01.2023
Court. No. 12
Sourav

CO 1446 of 2022

Papia Chakraborty
Vs.
Pranab Kumar Bakuli & Anr.

Mr. Rwitendra Banerjee
Mr. Sandip Kundu
Mr. Shibasis Chatterjee

...for the petitioner.

Mr. Bhagabat Chowdhury
Sk. Toslim Ali
Ms. Saba Parween

...for the opposite party.

Both parties are represented by their respective learned advocates.

In the instant revisional application under Article 227 of the Constitution of India, the Order No. 9 dated 19.07.2021 as passed by the learned Civil Judge (Junior Division) Amta, District- Howrah, in L.R. Misc. Case No. 03 of 2021 has been assailed.

By the impugned order in a proceeding under the provisions of Section 8 read with Section 9 of the West Bengal Land Reforms Act, hereinafter referred to as the 'said Act', learned trial Court allowed the injunction application as filed by the preemptor/petitioner under Order 39 Rules 1 and 2 of the Code of Civil Procedure and thereby prevented the opposite party no. 1/preemptee from making any addition or alteration or changing the nature and character of the 'Ka' Schedule property of the said application for preemption by making construction over the same.

The preemptee/opposite party no. 1 felt aggrieved and thus, preferred this instant revisional application.

Mr. Banerjee, learned advocate for the revisionist/preemptee in course of his argument contends that though the learned trial Court is justified in passing a restraint order from making any addition or alteration and changing the nature and character of the suit property, but the said Court is not justified in making a restraint order preventing the present revisionist/preemptee from making any construction over the same.

Mr. Chowdhury, learned advocate for the opposite parties/preemptors, however, contended that since in the meantime the present revisionist has made substantial construction over the suit property, the preset revisional application be disposed of ensuing the protection of the present opposite parties.

Mr. Banerjee, however, disputed that any construction has been made by his client during the subsistence of the order of injunction as passed by the learned trial Court in L.R. Misc. Case No. 03 of 2021.

On perusal of the entire materials as placed before this Court and after hearing the learned advocates of both sides, it appears to this Court that while passing the impugned order, learned trial Court made no mistake in restraining the present revisionist from making any change in the nature and character of the suit property but since the present revisionist has already invested a huge sum for construction over the suit property, learned trial Court ought to have allowed the present revisionist to complete such construction with a rider that the present revisionist would

not claim any equity over such construction if the preemption application succeeds.

In view of such, the instant revisional application is allowed in part.

The Order No. 9 dated 19.07.2021 as passed by the learned Civil Judge, Junior Division, Amta, District – Howrah, in L.R. Misc. Case No. 03 /21 is hereby modified to the extent that liberty is given to the present revisionist to complete the construction over the suit property strictly in accordance with law and sanctioned plan. However, it is made clear that the present revisionist shall not be entitled to claim any equity over such construction if the preemption application as pending before the learned trial Court is allowed. It is also made clear that over the 'Ka' Schedule property of the preemption application, the present revisionist shall not create any third party interest and/or shall not assign, transfer or let out any portion of the suit property till the disposal of the L.R. Misc. Case No. 03 of 2021.

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

(Partha Sarathi Sen, J.)