

31.07.2023
Sl. No.408(DL)
srm

C.O. No. 2478 of 2023

Sri Goutam Ghati

Versus

Sri Gobinda Dalui & Ors.

Mr. Amlan Jyoti Sengupta,
Mr. Soumen Mandal

...for the Petitioners.

This revisional application has been filed challenging an order dated May 2, 2023 passed by the learned Civil Judge (Senior Division), Ghatal, Paschim Medinipur, in Title Suit No.40 of 2020.

In this case, the defendant in the suit, prayed for a mandatory injunction by filing an application under Section 151 of the Code of Civil Procedure. The allegation was that in the middle of the night and in the absence of other family members, the plaintiffs entered into the suit property and dismantled a wooden structure. Thereafter, the plaintiffs started raising a construction without any sanction plan on the suit property. The defendant informed the matter to the local police station.

Thus, the defendant prayed for a mandatory order of injunction for demolition of the construction. The prayers in the said application were for a mandatory injunction directing

demolition of the construction on plot No.272 over an area of about 6 decimals, with a further prayer that upon demolition thereof, the partition commissioner be directed to allot the defendant's share in respect of the said land on which the construction was made and required to be demolished by order of court.

The law is well settled that the nature of the application could not be decided by the caption. Nomenclature under which such application was filed was not to be looked into. Rather, the substance of the application should be considered and the reliefs prayed.

Reference is made to the decision of *Sukhendu Maity vs Abhinaba Prakashan & Ors.* reported in (2005) 3 CHN 1 and *Subhankar Kundu vs. Municipal Returning Officer and Ors.* reported in (2016) 1 Cal LJ 261.

I have no hesitation to hold that in effect, the application was in the nature of a mandatory injunction, and hence an appealable order.

In my view, as a prayer for injunction had been refused. The order impugned would be an appealable order.

The revisional application is not entertained and the same is dismissed.

There shall be no order as to costs.

The petitioner is at liberty to take back the certified copy of the order sheets upon furnishing a photocopy thereof.

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

(Shampa Sarkar, J.)