

M/L 6
05.6.2023
Court No.652
SD

CO 2994 of 2018

Chaitali Das & Anr.

Vs.

Sri Fatik Chand Sardar & Ors.

Mr. Shiv Shankar Banerjee

Ms. Sanchita Barman Roy

...for the Petitioners.

Mr. Chitta Ranjan Chakraborty

Mr. Dip Jyoti Chakraborty

Mr. Sumit Banerjee

...for the Opposite Party No.1.

Affidavit of service filed by the petitioners in court today be kept with the record.

This is an application under Article 227 of the Constitution of India against the Order dated August 2, 2018 passed in Misc. Case No.118 of 2014, arising out of Title Execution Case No.5 of 2011, by the learned Civil Judge (Junior Division), 2nd Court, South 24 Parganas at Baruipur.

Petitioners contended that the petitioners herein as plaintiffs filed a suit for recovery of khas possession in respect of the suit property in the year 2010 being Title Suit No.129 of 2010. The said suit was decreed ex parte on January 3, 2011. Thereafter, the predecessor of the petitioners filed an execution application being aforesaid Title Execution Case No.5 of 2011.

In the said execution case, the present opposite party no.1, namely, Fatik Chand Sardar filed aforesaid Misc. Case No.118 of 2014 under Order XXI Rule 99, 100, 101 and 103 of the Code of Civil Procedure. In the said Misc. case, the

said opposite party no.1 had taken a plea of acquisition of title in the property in question by way of adverse possession. The petitioners herein filed written objection against the said plea. The said opposite party no.1 also filed an application for stay of the aforesaid execution proceeding in the said Misc. Case. The learned court below by the order impugned was pleased to grant the opposite party no.1's prayer for stay of the execution proceeding being aforesaid Title Execution Case NO.5 of 2011 till disposal of the aforesaid case being Misc. Case No.118 of 2014 with a cost of Rs.1,000/-.

Learned counsel appearing on behalf of the petitioners submits that the court below while granting stay did not consider that the opposite party no.6 herein was the original defendant/tenant and she is the wife of present opposite party no.1, who is the petitioner of the said Misc. Case. He has taken a specific plea that ex parte decree in the said suit is binding upon all the family members of the original defendant and he cannot acquire any title in the said property by way of adverse possession. Court also has not considered that the opposite party no.1 in fact has prayed for adverse possession against the judgment debtor/wife. In fact, the court below has passed the order of stay mechanically without considering the age of the execution proceeding. He further contended that no unconditional stay should have been granted by the court below in favour of the opposite party.

Learned counsel appearing on behalf of the opposite party no.1 raised objection and contended that the court below was justified in granting the order of stay as the petitioner/opposite party no.1 herein has taken a specific plea of acquisition of title by way of adverse possession. He further submits that unless and until that question raised by the opposite party no.1 is disposed of, the execution proceeding must not proceed.

He further contended that the suit has been decreed within three months of filing of the suit and the defendant in that suit did not get opportunity to file written statement.

In this context, learned counsel for the petitioners submits that the opposite party no.1 being the family member of original defendant/Judgment debtor was all along aware of the said proceeding and now, he has come with this frivolous application only to drag the execution proceeding and to deprive the decree-holder from getting the fruits of the decree, which was passed twelve years back.

Having considered the facts and circumstances of the case, it appears that the suit was filed in the year 2010 and the execution proceeding was started in the year 2011. Even the Misc. case under Order XXI Rule 99, 100, 101 and 103 of the Code of Civil Procedure was filed in the year 2014. Since then it is pending for disposal.

In the view of the above, the revisional application being CO 2994 of 2018 is disposed of with a direction upon learned Civil Judge (Junior Division), 2nd Court, South 24 Parganas at Baruipur to dispose of the pending application

under Order XXI Rule 99, 100, 101 and 103 of the Code of Civil Procedure being Misc. Case No.118 of 2014 within a period of eight weeks from the date of communication of the order.

The opposite party no.1/petitioner of the said Misc. case shall deposit Rs.5,000/- per month towards occupational charge from June 1, 2023 till disposal of the aforesaid Misc. Case NO.118 of 2014, before the court below and petitioners will be at liberty to withdraw the said amount from the court below subject to the result of said Misc. Case No.118/2014. On that condition, the execution case being Title Execution Case No.5 of 2011 shall be stayed, till disposal of aforesaid Misc. case.

However, it is made clear that if the petitioner/opposite party no.1 herein fails to pay the occupational charges for any month, within seventh day of succeeding month, the stay granted in connection with execution proceeding shall automatically stand vacated, without any further reference made to this court and in that case, the executing court will proceed with the execution case.

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.)