

S/L 20
17.4.2023
Court No.652
SD

CO 2337 of 2021

S.K. Alamgir
Vs.
Amalendu Ghosh

Mr. Subhojit Saha
Mr. Fasiur Rahaman

...for the Petitioner.

This application has been directed against Order No.8 dated 22.9.2021 passed by the learned Civil Judge (Junior Division), 1st Court, Uluberia in Misc. Case No.3 of 2021.

By the impugned order, learned court below was pleased to reject decree-holder's application for police help. The petitioner contended that by order dated 05.01.2022 the court below was pleased to hold that plaintiff/petitioner is the absolute owner of 'ka' schedule property and the said decree was passed ex parte against the defendant/opposite party herein and by the said ex parte decree, the defendant/opposite party herein is permanently restrained from disturbing the peaceful possession of the plaintiff/petitioner in the suit property and the right, title, interest of the plaintiff/petitioner over 'ka' schedule property was also declared.

The plaintiff/petitioner started execution proceeding being Title Execution Case No.4 of 2021. After so many years, the defendant/opposite now forcibly tried to enter into the suit premises and started making new construction. The plaintiff/petitioner again filed application under Order XXI

Rule 32 read with Section 151 of the Code contending that during the subsistence of permanent injunction and decree the defendant/opposite party again by dishonest motive deliberately and illegally created third party rights and made construction in the suit property.

The plaintiff/petitioner also moved an application for appointment of commissioner which was allowed by the court below and learned commissioner after making local inspection commission, submitted report in the said Misc. Case No.3 of 2021.

He further submits that in the Commissioner's report it is clearly mentioned that the defendant/opposite party has already created third party interest in the suit property. The petitioner/plaintiff diarised the said matter to the local police station and also moved in the said Misc. Case No.3 of 2021 seeking police help for implementing the order of permanent injunction passed vide order dated 05.01.2002. After hearing learned court below was pleased to pass the impugned order.

On perusal of the order impugned, it appears that the court below rejected the petitioner's prayer for police help only on the ground that concerned serestadar failed to place the original suit record before the court on the date fixed and the court below observed that in the absence of original suit record, it would not be appropriate to pass order allowing police help. The aforesaid observation of the court below has caused gross injustice to the petitioner/plaintiff, and a glaring example of miscarriage of justice, where no fault of

petitioner herein, his prayer was rejected, due to court officer's failure to produce the concerned case record at the time of hearing.

In view of the above, the order impugned dated 22.9.2021 passed in Misc. Case No.3 of 2021 arising out of Title Suit No.35 of 2000 is hereby set aside.

The court below is hereby directed to hear the plaintiff/decreed-holder's application for police help afresh after serving notice upon opposite party and to dispose of the same within a period of twelve weeks from the date of communication of the order, without being influenced by any observation made herein.

Accordingly, CO 2337 of 2021 is disposed of.

There will be no order as to costs.

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.)