

11.10.2023

Ct.No. 7
Sl.No.AD 33
Amalranjan

C.O. No. 3200 of 2023

Vikash Pandey and ors
Vs.
Ram Shankar Ram Kanu and ors.

Mr. Abhimanyu Banerjee
...for the petitioners

Mr. Prosenjit Mukherjee
Mr. Saptarshi Chakraborty
Mr. Arghya Kamal Das
...for the respondents

This application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration of title and permanent injunction challenging an order dated 10th August, 2023 passed by the learned District Judge, Hooghly, in Miscellaneous Appeal No. 97 of 2022 thereby affirming the order no. 25 dated 05.08.2022 passed by the learned Civil Judge (Junior Division) 1st Court, Hooghly at Chinsurah in Title suit No. 80/2020.

The petitioners filed an application for injunction in connection with the said suit and prayed for temporary injunction. Initially an ad-interim order of status quo in respect of nature character and possession of 'A' and 'C' schedule property was passed. But upon a contested hearing the order of injunction stood vacated by an order dated 5th August, 2022 passed by the learned trial Judge.

The learned advocate for the petitioners submits that the defendants are making construction by encroaching upon the property of the petitioner which has been specifically described in schedule 'C' to the plaint.

After going through the schedule of the plaint this court finds that the schedule 'C' is a part and parcel of 'A' schedule property. However, the property in 'C' schedule has not been properly identified and demarcated in the plaint.

The learned trial Judge after going through the materials on record observed that the schedule 'A' consists a portion of a plot no. 20 and 21 schedule 'B' consists of portions of plot nos. 19 and 20. The learned Judge further recorded that the defendant no. 1 is in occupation a portion of the property in plot no. 20. The learned trial Judge after observing that the schedule 'C' property has not been properly described rejected the application for temporary injunction.

The learned District Judge also observed that schedule 'C' property cannot be properly identified.

After going through the prayer of the injunction application this court finds that the

plaintiff has prayed for an order of injunction restraining the defendant no. 1 not to make any construction. However, the portion of the property in respect of which the plaintiff has prayed for an order of injunction has not been specifically identified in the said application for injunction.

This court is, therefore, of the considered view that the learned Judges of both the court below were perfectly justified in rejecting the prayer for injunction. The impugned order, therefore, calls for no interference.

The revisional application being CO. 3200 of 2023 stands disposed of with the aforesaid observations.

Urgent certified photo copy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.)