

04.12.2023
Court No. 19
Item no.27
CP

C.O. No. 3684 of 2023

Kalyan Sarbajna

Vs.

Smriti Sarbajna & Anr.

Mr. Partha Pratim Ray
Mr. Malay Bhattacharyya

.....for the petitioner.

The petitioner is aggrieved by the order dated September 30, 2023, passed by the learned Additional District Judge, Fast Track Court, Serampore, Hooghly in Misc. Appeal No. 50 of 2023. The learned court refused to stay the operation of the order dated September 26, 2023 and rejected the application filed by the petitioner.

According to the petitioner, the learned lower appellate court ought to have granted an injunction restraining the defendant from changing the nature and character of the suit property and from raising an alleged illegal construction.

The learned lower appellate court was of the view that the main prayer of the plaintiff in Title Suit No. 140 of 2023 was in the nature of partition, declaration and injunction. Determination of the status of the suit property in question, i.e., whether the suit property was a joint property and partitioned by metes and bounds was the issue.

The learned Trial Judge rejected the application for injunction upon holding that merely because the suit property was not partitioned formally by metes and bounds, a co-sharer could not be restrained from making construction within his specific demarcated portion. The court, upon appreciation of the records, found that the parties had their specific shares with their specific demarcations. The relief for injunction was an equitable relief and the court was of the view that the plaintiff had not come before the court with clean hands.

Aggrieved by the order of refusal of the application for temporary injunction an appeal was preferred. The learned appellate court was of the view that upon scrutiny of the documents relied upon by the plaintiff, namely, the Title Deed No. 657 of 1990, L.R. Khatian in respect of Dag No. 2648 and L.R. Khatian No. 6795 etc., the learned trial judge refused the injunction. Without those records, it would not be possible for the learned lower appellate court to decide the matter.

The learned court was of the view that the property tax receipts and allocation of specific municipal holding numbers would indicate that each of the parties were enjoying their own demarcated

share. The plaintiff had also made a construction over his respective property, in his possession.

Under such circumstances, this court does not find that there is any scope to interfere with the order impugned.

The hearing of the misc. appeal be expedited.

The revisional application is disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)