

02.11.2023

Sl. 14

Ct.No. 07

KB/Amalranjan

C.O. 4013 of 2023

Akbar Ali Mir

Vs

Sabnam Mir

Mr. Sk Toslim Ali.....for the petitioner

Learned advocate for the petitioner is present.

Heard learned advocate for the petitioner.

This application is directed against the order dated 17.10.2023 passed by learned Additional District & Sessions Judge, Amta, Howrah in Misc. Appeal No. 34 of 2023 (New No. 7/2023).

It is the contention of the petitioner that the learned trial judge acted with error while passing the impugned order that there are no such family settlement in between the predecessor of the defendants, namely, Abed Ali Mir and one namely, Anowar Ali Mir and the predecessor of the defendants during his life time has never transferred his share or portion in respect of the suit plot to any such person and he during his life time was possessed or occupied the said land and after his demise the present defendant/appellant should enjoy the said share in respect of property.

Learned advocate for the petitioner submits that his clients are in possession of the suit property and this fact was not taken into consideration by the learned trial judge.

Upon perusing the order passed by the learned trial court and the learned lower appellate court, this court is of the view that, prima facie, the plaintiffs/opposite parties were able to establish balance of convenience in their favour and considering the nature of the suit the normal procedure would be to maintain status quo till disposal.

This court does not find any error in the order passed by the learned trial court and the learned lower appellate court.

It is, however, made clear that the ground raised by the petitioner in this revisional application will be kept open to be raised in the application under order 39 rules 1 and 2 of the Code of Civil Procedure which is to be decided on contest.

Thus, this application stands disposed of.

Learned trial court is requested to dispose of the application under order 39 rules 1 and 2 expeditiously.

( Biswaroop Chowdhury,J. )