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2023

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

C.O. 155 of 2022
Alam Ali Ahmed & Ors.
-Versus-
Sri Jayanta Roy & Ors.

Mr. Debasish Mukhopadhyay
Mr. Anirban Banerjee

...For the Petitioner

Being aggrieved by and dis-satisfied with the order No. 1 dated 21st September, 2022 passed by the learned District Judge, Jalpaiguri in Miscellaneous Appeal No. 39 of 2022 present application has been preferred. It is contended that the plaintiffs / petitioners herein filed Title Suit No. 354 of 2022 before the Court of learned Civil Judge (Junior Division), 2nd Court at Jalpaiguri and also sought for an injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs in respect of the suit property as mentioned in the schedule to the plaint.

Accordingly, learned Trial Court passed an ex parte ad interim order restraining the respondents and his associates and agents from interfering with the peaceful possession of the plaintiffs in respect of the suit land for a limited period.

Being aggrieved by the said order the defendants / opposites parties preferred aforesaid Misc. Appeal No. 39 of 2022 and the Appellate Court by the impugned judgment and order was pleased to observe as because the Court of higher rank has already passed an injunction order in Title Suit No. 106 of 2022 which also contains the prayer that the particular defendants who are

the appellants herein being no right, title or interest over the self-same property, to avoid conflict in between the two orders, the ad interim order passed by the learned Trial Judge in aforesaid Title Suit No. 354 of 2022 without hearing the defendants/opposite parties herein, was set aside.

The Appellate Court further directed the Trial Judge while disposing the aforesaid Misc. Appeal, to dispose of the injunction application after giving opportunity of hearing to the defendants on merit keeping the observation made therein.

This Court by its order dated 1st February, 2023 observed that no certified copy of the order of the Trial Court, which was reversed by the Appellate court by the impugned order nor the injunction order passed in partition suit No. 106 of 2022 have been annexed and the petitioners were directed to annex certified copy of the said two orders before the matter is called for hearing in the next time.

Mr. Debasish Mukhopadhyay, learned Counsel appearing on behalf of the petitioners submits today before this Court that present Application being C.O. 155 of 2022 may be disposed of by confirming the direction made by the court below, for disposal of the injunction application on merit seeking further direction upon the Trial Judge to dispose of the injunction application within a time frame.

Since the prayer made by Mr. Mukhopadhyay is innocuous and if the present application is disposed of in terms of the said prayer the defendants / opposite

parties will have no cause to prejudice, service of revisional application upon the opposite parties is hereby dispensed with.

C.O. 155 of 2022 is hereby disposed of with a direction upon the Court below to dispose of the injunction application on merit after giving opportunity to both the parties to contest, preferably within a period of 12 (twelve) weeks from the date of communication of this order.

However, this is made clear that this Court has not gone into the merits of the case and the learned Trial Court will dispose of the injunction application on merit without being influenced by any observations made herein by this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)