

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 107 of 2022

Krishnaparasad Maity & Ors.

Vs.

Sarbadaman Shyamal

With

C.O. 106 of 2022

Krishnaparasad Maity & Ors.

Vs.

Sarbadaman Shyamal

For the petitioner

:Mr. Rabindranath Mahato, Adv.
Mr. Aritra Shankar Ray, Adv.

For the Opposite Party

:Mr. Sukanta Das, Adv.

Heard On

:27.06.2024

Judgment On

: 09.07.2024

Bibhas Ranjan De, J. :

1. Both the civil revision applications having identical facts and circumstances and arising out of the self same cause of action shall be disposed of via this common judgement.
2. Petitioners/plaintiffs filed the Title Suit being no. 159 of 2021 before the Court of Ld. Civil Judge, Senior Division, Kharagpur *inter alia* praying for declaration of their right, title, interest and possession in respect of the property described in the schedule to the plaint with a prayer for ad interim injunction. Ld. Trial Court refused the same and being aggrieved by and dissatisfied with that order of refusal, petitioners/ plaintiffs preferred Miscellaneous Appeal being no. 66 of 2021 before the Court of Ld. District Judge, Midnapore along with the prayer for an ad interim injunction. Ld. District Judge allowed the prayer in respect of 'Ka-1' schedule property till 14.09.2021 with a direction to serve notice in compliance with the Provision of Order 39 Rule 3 (a) (b) of Code of Civil Procedure (for short CPC), but refused to pass an order of ad interim injunction with respect to 'Ka-2' schedule property. Being aggrieved with the said order of the District Judge the

petitioners herein filed revision application being no. C.O. 106 of 2022.

- 3.** The said Miscellaneous Appeal being no. 66 of 2021 was finally disposed of by the Ld. Additional District Judge, Fast Track, 2nd Court, Paschim Midnapore wherein Ld. Judge dismissed the said appeal and affirmed the order passed by the Ld. Trial Court. Being aggrieved, the petitioners filed the revision application being no. C.O. 107 of 2022.
- 4.** According to plaintiffs/petitioners the entire subject property was in possession of one Haranarayan Maity, the father of the petitioner no. 1 & 2 herein, since long and after demise of their father also they continued their peaceful possession over the schedule property. Specific case of the petitioners is that Haranarayan Maity purchased the property described in 'Ka-1' schedule property and cultivated 'ka -2' schedule property as Bargadar. Being threatened of dispossession at the instance of the opposite parties they filed the Title Suit claiming right, title and interest over the 'Ka-1' schedule property and also claimed right of cultivation over the 'Ka-2' schedule property as Bargadars.

Argument:-

5. Ld. Counsel, Mr. Rabindranath Mahato, appearing on behalf of the petitioner has contended that 'Ka-1' schedule property belonged to their father and 'Ka-2' schedule property is owned by the opposite parties. It is contended that the petitioners were Bargadar in respect of 'ka-2' schedule property. In course of argument, Mr. Maity has submitted that necessary direction be given upon the Ld. Trial Court to refer the issue of Bargadar to the appropriate authority for decision.
6. Per contra, Ld. Counsel, Mr. Sukanta Das, appearing on behalf of the opposite party supported the reasons assigned in the order impugned.

Analysis:-

7. Ld. Trial Court refused the ad interim prayer in respect of 'Ka' schedule on the ground of its non-existence in the schedule to the plaint. Ld. Trial Court also refused to promulgate any ad interim order over the 'Ka-2' schedule property in terms of Section 21 (3) of the West Bengal Land Reforms Act (for short WBLR Act) with respect to their right as Bargadar. On this issue argument advanced by Mr. Mahato cannot be taken into

account as Ld. District Judge in his order dated 13.08.2021 already recommended the reference under Section 18(1) of the WBLR Act.

- 8.** Ld. Appellate Court refused to interfere with order passed by the Trial Court on the ground of non-existence of 'Ka' schedule and on the ground of Bargadar issue.
- 9.** Here in this case plaintiffs/petitioners could not produce any document with respect to 'Ka-2' property in respect of their claim as Bargadar. It is also case of the petitioners/plaintiffs that their names were neither recorded nor any receipt was issued in their favour in lieu of share given to the owner of the property. Therefore, the dispute regarding Bargadar was a question of fact before the Trial Court which cannot be determined in any Civil Court within the meaning of Section 21 (3) of the WBLR Act. Moreover, the issue of Bargadar raised before any Civil Court can only be determined by referring the same to the B.L.L.R.O under Section 18 (1) of the Act. From that point of view, Ld. Trial Court was justified in refusing the prayer made by the petitioners with respect to their right over 'Ka-2' property as Bargadar.

- 10.** Now coming to ad interim prayer of injunction made by the petitioners over the 'Ka' schedule property which was also refused by the Ld. Trial Court as there was no property under the heading 'Ka' schedule, the Ld. Trial Judge rightly refused the prayer of ad interim injunction over the 'Ka' schedule property which was not at all in existence in the schedule to the plaint.
- 11.** Therefore, Ld. Appellate Court also rightly refused to interfere with the order of the Trial Court in terms of non-existence of 'Ka' schedule property as well as the provision of Section 21 (3) read with Section 18 (1) of the W.B.L.R. Act.
- 12.** In the premises set forth above this Court also finds no reason to interfere with the orders impugned in connection with Miscellaneous Appeal no. 66 of 2021.
- 13.** As a sequel, both civil revision application being no. 106 and 107 of 2022 stand dismissed.
- 14.** Interim order, if there be any, stands vacated.
- 15.** Connected applications, if there be any, stand disposed of accordingly.

- 16.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 17.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]