

M/L 1
10.6.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 349 of 2024

Nita Malaker
Vs.
Malabika Ghosh

Mr. Iftekar Munshi

...for the Petitioner.

Ms. Sarmila Das

...for the Opposite Party.

The revisional application under Article 227 of the Constitution of India is directed against the Order No.1 dated November 29, 2023 passed by the 2nd Court of learned Civil Judge (Senior Division) at Barasat, District: 24 Parganas (North) in Misc. Case No.137 of 2023 arising out of Execution Case No.15 of 2019.

The Title Suit No.307 of 2014 filed by opposite party for eviction of the tenant of the suit property was decreed ex parte. The said decree was put into execution giving rise to the connected execution case.

The petitioner in the said execution case has filed an application under Order XXI Rules 99, 100 and 101 of the Code of Civil Procedure for determination of her independent right title in interest over the suit property, being the said Misc. Case No.137 of 2023.

The learned Trial Judge by the order impugned has dismissed an application filed by the petitioner praying for an order of injunction restraining the decree holder from transferring/alienating and/or encumbering the suit property and/or changing the nature and character of it by holding *inter alia* that the petitioner is

claiming her right over the suit property through the judgment debtor.

The petitioner is claiming her independent right title interest over the suit property on the strength of an alleged agreement for assignment of lease dated May 11, 2012 executed by the legatees under the will of one Kanailal Dutta, the lessee of the suit premises. The judgment debtor is admittedly one of such legatees, therefore the executing Court has rightly held that the petitioner has failed to establish prima facie case to have an order of injunction as she is claiming through the judgment debtor.

The order impugned therefore does not call for any interference, CO 349 of 2024 is therefore dismissed without any order as to costs.

However, the issue whether an agreement for assignment of lease can at all confer any independent title over the suit property upon the petitioner needs to be addressed as the said issue shall determine the maintainability of the said Misc. Case.

The executing Court is requested to decide the said issue first.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)