

28.03.2024.
Item no. 42.
Court No.19
ap

C.O. No. 403 of 2024

**Sri Sujit Kumar Kar & Ors.
Versus
Sri Kanai Lal See & Ors.**

Mr. Souvik Das,
Mr. K. R. Ahmed,
Mr. Soumava Santra.

...For the petitioners.

Mr. Manish Kumar Das.

...For the opposite party no.1.

The revisional application has been filed by the three added defendants, who have assailed the order dated January 2, 2024 passed by the learned Civil Judge (Senior Division) 1st Court at Contai, District - Purba Medinipur in Title Suit No. 180 of 2008.

By the impugned order, the learned Court allowed the application under Section 151 of the Code of Civil Procedure, 1908 filed by the plaintiff/opposite party no.1.

The plaintiff alleged that the petitioners had purchased part of the suit plot from the defendant nos. 4, 5, 6, 8, 9 and 10. Upon purchase of the said property, they were constructing and thereby were violating the order of temporary injunction. The plaintiff prayed that the Officer-in-charge, Bhupatinagar Police Station be directed to implement the order of temporary injunction.

The petitioners are aggrieved by the order, on the following grounds:

- (a) Although they were added as defendants in the suit, a copy of the application was not served upon them and they were not heard.
- (b) The order of implementation of the temporary injunction by police help against the added defendants was contrary to the order of injunction itself.
- (c) The order of injunction was against the defendant nos.1 and 2 and not against any other defendant.
- (d) Accordingly, the petitioners, upon whom the interest of the other defendants had devolved, would not be bound by the order of temporary injunction.

Learned Advocate for the plaintiff submits that the order impugned has been passed taking into consideration the fact that the injunction was operating in respect of all the suit plots and construction on any of the suit plots would violate the order of temporary injunction. He further submits that although the allegations in the application for temporary injunction was specifically against the defendant nos.1 and 2, the subsequent conduct of the other defendants would indicate that they had also attempted to violate the ad interim order of injunction by selling out the property and also by permitting the petitioners to raise construction.

It appears to this Court that the order of injunction was restricted to the defendant nos.1 and 2. The allegations against the other defendants with

regard to sale of the suit plots and also the allegations that the added defendants had violated the order of injunction were not brought to the notice of the Court by an application. Only the application seeking implementation of the order by the help of the police was filed. The said order was against the defendant Nos.1 and 2.

The plaintiff ought to have brought such facts to the notice of the Court and prayed for variation, modification and clarification of the order of injunction. Such procedure was not followed. Although the learned Court added the petitioners as defendants in the suit on the same date by an earlier order, the Court did not deem it fit to hear the added defendants/petitioners, before passing the order of police help.

Under such circumstances, the order impugned is set aside. This Court is not inclined to observe anything on the merits of the case, but this Court is of the view that the procedure adopted by the learned Court was not correct.

Under such circumstances, the said application shall be heard afresh in accordance with law upon allowing all the parties to file objection to the same. Before such application is decided, the plaintiff's application for modification of the injunction order shall be decided first.

Till the disposal of the application under Order 39, Rule 4 of the Code of Civil Procedure, 1908, the application under Section 151 of the Code of Civil Procedure, 1908, shall be kept in abeyance.

With the aforesaid directions, the instant revisional application is disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Sarkar, J.)