

Item No. 15
27.02.2024
Court. No. 19
GB

C.O. 421 of 2024

Madan Mondal & Ors.

Vs.

Sri Promato Mondal @ Bablu Mondal & Ors.

Mr. Partha Pratim Roy,

Mr. Debdutta Raha

... for the Petitioner.

The revisional application arises out of an order dated January 5, 2024, passed by the learned District Judge, South 24 Parganas at Alipore in Misc. Appeal No.432 of 2023.

The learned Civil Judge (Junior Division), 1st Court at Alipore, vacated the order of injunction on the prayer of the defendants, inter alia, holding that the plaintiffs could not file any document indicating that their share in the property had been separately demarcated.

Aggrieved, Misc. Appeal No. 432 of 2023 was filed. The prayer of the petitioners for stay of the order impugned was rejected on the ground that the application was misconceived.

Mr. Roy, learned advocate appearing on behalf of the petitioners/appellants in the misc. appeal submits that the partition deed of the defendants would itself show that the properties had been demarcated and partitioned by metes and bounds. Thus, the observation of the learned trial judge that the plaintiffs had failed to show that the properties had lost their character of being joint properties, was completely misconceived.

Having considered the issues involved, this Court is of the view that the application for stay was rightly rejected as an order of stay of operation of the order of the learned trial judge by which the order of injunction was vacated, would not result in automatic revival of the injunction which was earlier being enjoyed by the plaintiffs.

In order to obtain an injunction restraining the defendants from raising construction in the property involved in the suit, the plaintiffs would have to file a separate application in the appeal with proper prayers.

Under such circumstances, the revisional application is dismissed.

However, dismissal of this revisional application will not prevent the plaintiffs from filing an appropriate application before the learned appellate court in the misc. appeal and praying for necessary orders. If necessary, the plaintiffs/appellants can also pray for preponement of the date upon notice to the respondents and pray for any interim protection as may be deemed, fit and proper. The learned court shall decide such issue independently, without being influenced by any observation made in this order and solely on the merits of the case.

However, there shall be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)