

February 21, 2024
Sl. No.9
Court No.19
s.biswas

CO 426 of 2024

Sri Raja Mukherjee
vs.
Sri Utpal Sarkar @ Bappa

Mr. A. K. Acharyya
Mr. Kushal Chatterjee
Mr. Subir Banerjee
Ms. Moumita Das

... for the petitioner

Mr. Sounak Bhattacharyya
Mr. P. D. Mukherjee
Ms. Ankita Das
Mr. Ayush Shaw

... for the opposite party

The revisional application arises out of an order dated December 18, 2023 passed by the learned Civil Judge (Junior Division) at Serampore in Title Suit No.434 of 2021.

By the order impugned, the application for temporary injunction filed by the plaintiff was allowed. The defendants and their men and agents were restrained from dispossessing the plaintiff as well as from creating any disturbance in the plaintiff's peaceful possession of the Ka-1 schedule property and stood on that day till the disposal of the suit.

The second part of the order is assailed before this court by the defendants. By the said order, the application for local inspection under Order 39 Rule 7 of the Code of Civil Procedure filed by the plaintiff/tenant was allowed. The learned court held

that the condition of the property should be brought on record before any change takes place.

This is a suit for declaration of tenancy and permanent injunction. The opposite party claims to be a tenant in respect of one residential flat consisting of three bed rooms, one dining cum kitchen, two toilets with adjoining space with water and electric connection in the south-east side in the ground floor of main building being Municipal Holding No.1, Amarnath Road (Ward No.14), within the jurisdiction of Uttara Para Kortung Municipality.

The suit was filed with the allegation that the defendants along with their men and agents were trying to dispossess the plaintiff from the tenanted property illegally and forcefully. The allegations of threat and intimidation have also been made. Apprehending an illegal eviction, the suit was filed. In the plaint, there is no allegation that the defendants were trying to change the nature and character of the tenanted portion either by raising any construction or by demolishing the same. The plaintiff has been sufficiently protected by the order of injunction. The learned court has directed specifically that the defendants and their men and agents would be restrained from disturbing the plaintiff in respect of the property in question and they should not be disturbed in any way. When

such protection has been given and when there is no allegation that attempts have been made to dispossess the plaintiff from the property by either demolishing or by interfering with the structure which the plaintiff is occupying, the question of local inspection would not arise.

This order has been passed at a stage when the situation was not mature for a local inspection. There has to be some reason for the court to direct the local inspection. In this case, when the plaintiff has been sufficiently protected and when there are no allegations of any interference by the landlord with the property in question, the order is premature. If the occasion so arises in future, the plaintiff can renew his prayer, but at this stage the order impugned with regard to local inspection is erroneous and is thus set aside.

However, it is made clear that the order of injunction shall be complied with by the parties, unless it is varied, vacated or modified by a superior court.

The revisional application is accordingly disposed of.

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

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)