

S/L 24
01.10.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 597 of 2024

Zakir Hossain Mondal

Vs.

Manoranjan Majumder & Ors.

Mr. Tapan Kumar Rakshit
Mr. Surajit Roy

...for the Petitioner.

Ms. Ambiya Khatun

...for the Opposite Party Nos.1-2.

Affidavit of service filed on behalf of the petitioner be kept with the record.

The matter has been brought to the list at the instance of the petitioner for extension of the interim order but by consent of the parties, it is taken up for final disposal.

Ms. Ambiya Khatun, learned advocate appears on behalf of the plaintiffs, the opposite party nos.1 and 2 herein; since the service upon the other opposite parties has been dispensed with, the revisional application is ready as regards service.

The defendant no.1 in a suit for declaration of share in the suit property is the petitioner of the present application under Article 227 of the Constitution of India, which is directed against Order No. 41 dated December 21, 2023 passed by the Court of learned Civil Judge (Senior Division) at Bongaon, District: 24 Parganas (North) in the said suit being *Title Suit No.63 of 2021*.

The plaintiffs, the opposite party nos.1 and 2 had filed an application praying stay of all further proceedings of *Title Suit No. 212 of 2023*, a suit for declaration of title filed by the defendant no. 1, pending before the Court of learned Civil Judge (Junior Division) at Bongaon, District: 24 Parganas (North).

The learned Trial Judge by the order impugned has allowed the said application thereby has stayed the further proceedings of the said *Title Suit No. 212 of 2023* and has also stayed the operation of the *ad interim* order of injunction passed in the said suit.

An application under Section 10 of the Code of Civil Procedure is required to be filed in the subsequent suit in the present case, in *Title Suit No. 212 of 2023*; the learned Trial Judge has neither been vested with the jurisdiction to exercise the power under section 10 of the Code to stay the said subsequent suit, nor is he empowered to stay the order of injunction passed in the said suit.

The order impugned is therefore set aside.

This order however will not prevent the opposite party nos. 1 and 2 to renew their prayer in *Title Suit 212 of 2023*; if such an application is filed, the learned Judge where the said suit is pending, shall decide the said suit on its merit, in accordance with law.

The submission of Ms. Khatun that the defendant no.1 has been executing the construction work in the suit property is heavily disputed by Mr. Rakshit, learned advocate for the petitioner.

The parties are at liberty to raise the said issue before the learned Trial Judge.

CO 597 of 2024 is disposed of with the above terms without any order as to costs.

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.)