

09.05.2024
63
Ct. no. 652
sb

C.O. 569 of 2021

**Sabila Khatun & Ors.
Vs.
Krishnendu Dawn**

Mr. Partha Pratim Roy
Mr. Anirban Das ...for the Petitioners

The petitioner herein as plaintiff filed suit for declaration of title and permanent injunction before the court below being Title suit no. 292 of 2015. The petitioner's case is that he is enjoying the suit property as the sole raiyat but the defendant illegally trying to make construction over the suit property and caused disturbance in respect of the right of the plaintiff, claiming to be that the same is debutter property.

The petitioner herein in the said suit, filed an application for temporary injunction and also prayed for ad interim relief to that effect. Learned court below, by an order dated 18th November, 2015, has passed an ad interim order of injunction directing the defendant not to disturb the petitioner's possession over the suit property. Thereafter, by an order dated 15th February, 2016, ad interim order was extended till disposal of the suit.

In the said suit, the plaintiff/petitioner also filed a petition for local inspection commission which was

allowed and the local inspection commissioner also submitted a report. Thereafter, as the opposite party allegedly violating the order of injunction is continuing the construction work, the petitioner initiated a contempt proceeding being Misc. case no. 34 of 2018 under Order XXXIX rule 2A of the Code of Civil Procedure. The opposite party herein in the said Misc. case, filed another petition for local inspection commission and it transpires from the report of the learned advocate commissioner that the petitioner has raised some construction in the suit property, in violation of the order of injunction.

Accordingly, the petitioner made a prayer before the court below for demolition of construction which was made by the opposite party in violation of the order of injunction. However, learned court below by the order impugned, was pleased to reject the said application filed by the petitioner herein is the aforesaid Misc. case.

Being aggrieved by the said order, Mr. Anirban Das, learned counsel for the petitioners submits that the court below was not justified in rejecting the order of injunction and it is well within the jurisdiction of the court below to punish a person who disobeying the order of injunction, is going on with the construction work in the suit property. He further submits that the court below did not consider that the primary object of Order XXXIX Rule 2A is not only to punish wrong-doer

who has disobeyed the order of injunction but also to enforce the order. In fact, it is always open to the court to exercise its inherent power at any point of time to set the wrong right and not to allow the perpetuation of the wrong doing.

I have considered the submissions made by the petitioner and perused the order impugned. On perusal of the materials on record, it appears that the petitioner has sought for demolition order relying on a local inspection commission report, which in my considered opinion, is not sufficient enough to come to a definite finding, at this early stage, without making any further investigation and/or supporting documentary and/or oral evidence. The prayer for mandatory injunction, at the interlocutory stage, granted in a very rarest of the rare cases to prevent imminent danger. If there be any disobedience, such prayer can only be considered at the time of final adjudication of the Misc. case.

In such view of the matter, I do not find any impropriety in the ultimate finding of the order impugned at this early stage of contempt proceeding. Accordingly, C.O. 569 of 2021 is dismissed.

However, this order will not preclude the petitioner to make similar prayer before the court below at the appropriate stage of final hearing of the Misc. case being no. 34 of 2018 initiated by petitioner herein under Order XXXIX rule 2A of the Code.

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

(Ajoy Kumar Mukherjee, J.)