

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1160 of 2022
with
IA No. CAN 1 of 2022

Sk. Abdul Azim & Anr.
Vs.
Smt. Bharati Dhali & Ors.

Mr. Supratim Dhar
Mr. Dhananjay Nayak
Ms. Megha Sarkar
... For the petitioners

Mr. G.K. Das
Mr. K.C. Sahoo
... For the opposite party nos.2, 3, 6, 7,
9 and 10

In re: CAN 1 of 2022

1. Learned counsel appearing on behalf of the petitioners does not want to press the instant application.
2. Accordingly, the instant application stands dismissed as not pressed.

In re: CO 1160 of 2022

3. Challenge in this revisional application is the Order No.1 dated 26th April, 2022 passed by the learned Additional District Judge, Baruipur, South 24-Parganas in connection with Misc. Appeal No.15 of 2022 wherein the learned Judge refused to pass any interim order on an application filed on behalf of the appellants/petitioners herein under Order XXXIX Rules 1 and 2 read with

Section 151 of the Code of Civil Procedure (in short, CPC). The learned Judge directed the appellants/petitioners herein to file requisites for issuing notice upon the respondents.

4. The factual matrix of this case is that the petitioners filed a suit for partition before the learned Civil Judge (Senior Division) at Baruipur registered under Title Suit No.56 of 2022 with a prayer for declaring share and partition by metes and bounds by drawing up a preliminary decree and other consequential relief along with an application under Order XXXIX Rules 1 and 2 of the CPC with a prayer for an ad interim injunction which was allowed with a direction to maintain status quo by the parties to the suit.

5. Subsequently, the defendants/opposite parties herein after entering into the suit filed an application under Order XXXIX Rule 4 read with Section 151 of the CPC with a prayer for vacating the order passed on 3rd February, 2022 which was dealt with by the learned Trial Court by its order dated 11th April, 2022 whereby the learned Judge allowed the application under Order XXXIX Rule 4 read with Section 151 of the CPC.

6. That order has been challenged in Misc Appeal No.15 of 2022 at the instance of the plaintiffs/petitioners herein. On 26th April, 2022, the order was passed by the learned Additional District Judge, Baruipur, South 24-Parganas, directing the petitioners/plaintiffs to file

requisites for issuing notice upon the respondents and refused to pass any interim prayer.

7. Being aggrieved, the instant revisional application has been filed.

8. Learned counsel appearing on behalf of the petitioners has submitted that the learned Appellate Court should have considered the prayer for interim injunction in view of the nature of the suit.

9. Learned counsel appearing on behalf of the opposite party nos. 2, 3, 6, 7, 9 and 10 has submitted that the application under Order XXXIX Rules 1 and 2 read with Section 151 of the CPC is still pending before the learned Appellate Court and awaiting disposal.

10. In the circumstances, I find hardly any reason to go into the merit of the dispute which can only be adjudicated at the time of hearing the application under Order XXXIX Rules 1 and 2 read with Section 151 of the CPC.

11. Given facts and circumstances, the instant revisional application stands disposed of with a direction upon the learned Appellate Court to dispose of the application under Order XXXIX Rules 1 and 2 read with Section 151 of the CPC within 15 days from the date of re-opening of the Court after puja vacation.

12. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)