

May 16, 2024
Sl. No.8
Court No.19
s.biswas

CO 1779 of 2024

Md. Rashid and others

vs.

Ladoo Bibi alials Ladli Bibi and others

Mr. Partho Pratim Roy
Mr. Rajdeep Bhattachaya
Mr. S. Siddique

... for the petitioners

Mr. Piyush Chaturvedi
Mr. Suman Basu
Mr. Abdul Murshid
Mr. Gourav Dutta

... for the opposite parties

1. Prima facie, this court is of the view that the learned Civil Judge (Junior Division), 2nd Court at Alipore, South 24 Parganas need not have invoked the inherent power under Section 151 of the Code of Civil Procedure, by restraining the parties from changing the nature and character of the suit property till disposal of the temporary injunction application, in view of the fact that an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure was already pending at the instance of the plaintiffs.
2. The learned court could have taken up the said application and adjudicated the prima facie case, balance of convenience and inconvenience and irreparable loss and injury and passed necessary ad interim orders. Instead, by circumventing the provision of Code of Civil Procedure, the learned court invoked the inherent power.

3. However, this court is of the view that the learned judge had rightly rejected the preliminary issue of maintainability, inter alia, holding that the issue requires trial. This court is not inclined to interfere with that part of the order.
4. However, having found the learned court could have proceeded with the injunction application, this court deems it fit to direct the learned Civil Judge (Junior Division), 2nd Court at Alipore, to decide the issues of granting ad interim relief within May 22, 2024, peremptorily, without being influenced by the order passed by this court. The objection to the said application will be filed within 48 hours.
5. Although Mr. Roy prays for vacating of the order, this court is of the view that the learned trial judge should decide on the point of grant of ad interim injunction within May 22, 2024.
6. The parties are at liberty to approach the learned court by filing a put up petition.
7. Accordingly, the revisional application stands disposed of.
8. 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.)