

19.09.2024
Item No.9 DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 1803 of 2024

Sampa Acharya

-Vs-

Malabika Acharya

Mr. Dhiraj Trivedi,
Mr. Bikash Kumar Singh,
Mr. Sunil Gupta.
.....for the petitioner.

Mr. Gopal Pahari,
Ms. Piyali Kulari,
Ms. Mandeep Kaur.
.....for the opposite party.

The defendant in a suit for declaration is the petitioner of the instant application under Article 227 of the Constitution of India.

The said suit being *Title Suit No. 93 of 2024* is pending before the learned Civil Judge (Junior Division) at Bidhannagar, District: 24-Parganas (North).

The plaintiff, the opposite party herein, aggrieved by the order of the learned Trial Judge dated April 08, 2024 whereby the prayer of the plaintiff for an ad interim of injunction was refused, has preferred the connected *Misc. Appeal No.46 of 2024* which is pending before the 2nd Court of the learned Additional District Judge at Barasat, District: 24-Parganas (North).

The Appeal Court below by the order impugned dated April 26, 2024 has passed an *ad-interim* order of injunction directing the parties to maintain *status quo* regarding possession of the plaintiff over the suit property till May 20, 2024; the said order of injunction was subsequently extended from time to time and is still subsisting.

The father of the opposite party was the admitted owner of the suit property; he, by a deed of gift, had bequeathed the said suit property to the opposite party.

The opposite party, on the strength of her such title, had filed *Title Suit No. 69 of 2007* for eviction of her brother, the husband of the plaintiff; the said suit was dismissed, so also the *Title Appeal No. 6 of 2016* arising out of the said decree; but the suit was decreed in S.A. *129 of 2022* and the said decree was affirmed in *Special Leave to Appeal (c) No. 18975 of 2023*.

The said decree of eviction has been put into execution giving rise to *Title Execution Case No. 33 of 2023* pending before the 2nd Court of learned Civil Judge (Senior Division) at Barasat, District: 24 Parganas (North).

The plaintiff is praying for a declaration of her right, title, interest over the suit property in the connected suit; she is required to approach the executing Court for such declaration; the independent suit is not maintainable in terms of Order XXI Rule 101 of the Code of Civil Procedure, therefore, in aid of such suit, no injunction can be granted.

The order impugned therefore is not sustainable and is accordingly set aside.

C.O. 1803 of 2024 is allowed with the above observations without any order as to costs.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)