

30 04.09.2024
AN Ct. No. 01

FMA 1030 of 2024
with
IA No. CAN 1 of 2024

Subir Kumar Bose & anr.
Vs.
Chetan Singh & ors.

Mr. Sourav Kr. Mukherjee
Ms. Sahana Pal

... for the appellants

Mr. Habibur Rahaman
Mr. A. Singh

... for respondent 1, 2, 3

1. This intra-Court appeal filed by the private respondents in WPA 28540 of 2023 is directed against the order dated 09.07.2024 by which the learned writ court had directed the Officer-in-Charge, Khardah Police Station to keep strict vigil over the property and ensure that the construction in any manner whatsoever does not take place at the subject premises violating the order passed by the Civil Court.

2. The learned writ court proceeded on the basis that there is a binding order of the status quo passed by the learned trial court in T.S. No. 455 of 2008 dated 24.01.2019. It is pointed out by the learned counsel appearing for the appellant/private respondent in the writ petition that the appellant is not a party to the suit, defendant in the suit and he had purchased the property in the year 1996 whereas the suit for partition was filed in the year 2008 and it is submitted that the vendor of the appellant is the first defendant in the suit. Thus, it is seen

that on the date when the order of status quo by the learned trial court was passed, the first defendant had no title over the property which has been purchased by the appellant. Be that as it may, the petitioner in the writ petition, has not specifically stated that the appellants were not the defendants in the suit and the reading of the affidavit filed in support of the writ petition gives an impression as if there was a binding order of status quo passed by the Civil Court and the appellants were violating the order. Thus, the correct facts have not been placed before the Court rather we would observe that it is a case of clever drafting. In fact, one of the writ petitioners had filed an earlier writ petition being W.P. 23369(W)/2014 alleging that the private respondents therein were acting in violation of the order so passed in the Civil Court. The writ petition was dismissed by order dated 07.07.2015 giving liberty to the writ petitioner, the respondents herein to take recourse to Order XXXIX Rule 2A of the Civil Procedure Code.

3. Thus, we are of the view that the writ petition could not have been entertained and the order impugned could not have been passed. Hence, the appeal stands **allowed** and the order passed in the writ petition is set aside and the writ petition is hereby dismissed. The dismissal of the writ petition will not in any manner prejudice the rights of the writ petitioner in any pending civil proceedings.

4. In view of the above, connected application, if any, also stands allowed.

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)