

29.02.2024
22
Ct. no. 652
sb

CO 2172 of 2021

Mohadev Sardar & Ors.
Vs.
Parameswar Betal & Ors.

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee ...for the Petitioners

Mr. Debasis Sur
Mr. Anshuman Patra
Mr. Hare Krishna Halder
...for the Opposite parties

Affidavit of service filed by the petitioners is taken on record. Both the parties are represented.

This application has been preferred by challenging the order dated 25.11.2021 passed by learned Additional District Judge, Baruipur, South 24 parganas in Misc. Appeal no. 15 of 2021. By the order impugned, the learned court below has refused to grant stay upon the ad-interim order of injunction passed by the Trial court vide order dated 4.8.2021.

The opposite parties herein as plaintiffs filed suit being T.S. 331 of 2021 seeking partition in respect of the suit property, stating that both the plaintiffs and the defendants are owner in respect of the suit property. In the said suit, plaintiffs also filed an application under Order XXXIX rule 1 and 2 of the Code of Civil Procedure praying for an order of injunction restraining the

petitioners herein from interfering with the peaceful possession of the plaintiffs in respect of the suit property. The prayer for passing an order of ad-interim injunction was also moved before the Trial court and the learned Trial court by an order dated 4.8.2021, was pleased to direct plaintiff and defendant nos. 1 to 4 to maintain status quo in respect of the nature and character of the suit property till the next date.

Being aggrieved by that order, the defendants/petitioners herein preferred aforesaid appeal before the court below and they have also moved an application for stay of the operation of the interim order of injunction passed ex parte. According to the petitioners/defendants, the plaintiffs/opposite parties have suppressed the material facts. He strenuously argued that the suit property is admittedly joint properties but the plaintiffs have not impleaded all the co-sharers as necessary parties in the suit. Accordingly, the suit is defective for non-joinder of necessary parties. The court below without considering that aspect of the matter, refused to grant stay upon the order of ad-interim injunction passed by the court below. He also submits that both the courts below failed to consider that the suit is also not maintainable since in a partition suit, all the co-sharers have not been impleaded.

Learned counsel for the opposite parties raised objection and contended that since this is a suit for partition, the Trial court below was justified in passing order of injunction in the form of status quo for protection and preservation of the suit property and as such, the question of granting stay upon the injunction order which was passed for a limited period, does not arise.

Having considered the facts and circumstances of the case, the revisional application being C.O. 2172 of 2021 is hereby disposed of with a direction upon the court below to dispose of the Misc. Appeal no. 15 of 2021 within a period of twelve weeks from the date of communication of the order after giving an opportunity to both the parties to contest.

Both the parties will be at liberty to agitate their grievances including the issue of non-joinder of necessary parties before the court below at the time of hearing. It is made clear that I have not gone into the merits of allegation.

C.O. 2172 of 2021 is accordingly disposed of.

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.)