

Item No.39
19.03.2024
Court. No. 19
GB

C.O. 2690 of 2023

Munni Khatun & Anr.
Vs.
Mohammad Matiur Rahaman

*Mr. Ankit Agarwala,
Ms. Alotriya Mukherjee*

...for the Petitioners.

This Court does not find any necessity to interfere with the order dated April 18, 2023, passed by the learned District Judge, Hooghly in Misc. Appeal No.122 of 2022 and the order dated September 23, 2022, passed by the learned Civil Judge (Junior Division), 2nd Court at Hooghly in Title Suit No.622 of 2021.

It appears that the learned courts had restrained the defendants from raising any kind of construction on Kha-1 schedule property, which was a 3 ft. wide and 52 ft. long passage along side the boundary wall. The passage is adjacent to the premises of the plaintiff. It has been alleged that by violating the Panchayat Rules and without leaving adequate statutory space, a construction was undertaken. The initial order of injunction was challenged before the learned appellate court and the learned appellate court also found that the restriction had been imposed only on a small piece of land adjoining the land of the plaintiff, which was Kha-1 schedule, and as such, the order passed by the learned trial judge, should not be interfered with.

It appears that the learned trial judge had restricted construction on Kha-1 schedule of the property being

undertaken without leaving the adequate statutory space and in violation of Panchayat Rules. The learned court acted on the basis of the rules and regulations under the Panchayat Act with regard to the said construction. It is the bounden duty of any person, to construct according to rules and by keeping adequate statutory space.

The contention of Mr. Agarwala, learned advocate appearing on behalf of the petitioners that there was no cause of action to file the suit and the suit ought to be rejected as not maintainable, is not accepted at this stage. The petitioners are at liberty to take appropriate steps in accordance with law.

If there is an infraction of light and air or any other kind of actionable nuisance, which gives right to a cause of action, the infringing landowner or the owner of the property can be proceeded against.

Under such circumstances, this Court does not find any necessity to interfere with the order impugned. The suit is at the stage of framing of issues. The learned court shall expedite the suit and dispose of the same within a year. The issue of maintainability to the suit shall be decided.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)