

18.01.2024
Item No.74
gd/ssd

CO/3472/2023
SARFARAZ AHMED AND ORS.
VS
MOBARAK HUSSAIN AND ORS.

Mr. Bhagabat Chowdhury,
Mr. Subrata Mukherjee
..for the Petitioners.

The defendants in a suit for declaration of title and for a further declaration that the deeds executed in favour of the defendants/petitioners herein is invalid, inactive, inoperative and fraudulent one has challenged the Order Nos. 32 and 41 dated 13.12.2022 and 02.08.2023 in TS No.54 of 2019 by filing this application under Article 227 of the Constitution of India.

The opposite parties herein applied for water connection in the suit property which was allowed by the order dated 13.12.2022. Alleging that the petitioners were creating obstruction in the matter of effecting supply of water to the opposite parties herein, an application for police help was filed by the opposite parties herein which stood allowed by the order dated 2nd August, 2023..

Mr. Chowdhury, learned advocate representing the petitioners submits that the plaintiffs are trying to encroach upon the portion occupied by the defendants/petitioners herein by

way of taking water connection. He further submits that the orders impugned are required to be set aside.

It appears from the record that the opposite parties have filed a suit for a declaration that they are the joint owners of the suit property and for a further declaration that the deed of sale executed in favour of the defendants/petitioners herein is invalid, inactive, inoperative and fraudulent one and not acted upon.

The learned trial judge after taking note that there is no water connection in the suit property and also that the opposite parties have an urgent need of water connection in the suit property for their use and enjoyment and also that they have applied before the concerned municipality to provide for water connection and the staffs of the municipality came to the suit property on several occasions for effecting water connection but the same could not be provided due to strong physical obstruction by the defendants/petitioners herein, observed that no sufficient materials are before the court to deny and/or deprive the plaintiffs from enjoying the essential service of water supply merely on the allegation of the defendants/petitioners. On the basis of such finding the learned trial judge allowed the petition dated 6th August, 2019 and restrained

the defendants from creating any sort of obstruction to the plaintiffs at the time of water connection in the suit property by the staffs, labours and masons of the concerned municipality.

Mr. Chowdhury, learned advocate could not produce any materials to controvert such factual finding of the learned trial judge.

After hearing Mr. Chowdhury, learned advocate for the petitioners and after considering the materials on record, this court is of the considered view that there is no infirmity in the order dated 13.12.2022.

The learned trial judge allowed the application under Section 151 of the Code for police help for the purpose of implementation of the order dated 13.12.2022. The learned trial judge after taking note of the fact that an order dated 13.12.2022 was passed for giving water connection in favour of the opposite parties herein and after taking note of the fact that the petitioners raised strong objections at the time of effecting the water connection rightly allowed the prayer for police help for implementation of the order for water connection.

In my considered view, there is no infirmity in the order dated 2nd August, 2023.

Mr. Chowdhury, learned advocate for the petitioners submits that the instant suit being Title

Suit No.54 of 2019 has been filed suppressing the fact of pendency of an earlier partition suit by the opposite parties herein.

The petitioners will be at liberty to work out their remedies in that regard in the manner known to law.

For the reasons as aforesaid, CO 3472 of 2023 stands dismissed without any order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)