

13.05.2024
Sl. No.18(DL)
srm

C.O. No. 3762 of 2023

Shrimati Kaberi Pradhan & Ors.

Versus

Shrimati Anita Sinha & Ors.

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray

...for the Petitioners.

Mr. Shibaprasad Ghosh,
Ms. Srijani Mukherjee

...for the Opposite Parties.

1. Affidavit-of-service be taken on record.
2. The petitioners are aggrieved by two orders. Perused the orders dated December 20, 2022 and September 15, 2023; It appears that by the first order, the learned Additional District Judge, 2nd Court at Barrackpore, North 24-Parganas, set aside an interim order of *status quo* with regard to the nature, character and possession of the property passed by the learned trial Judge on July 12, 2022 till August 8, 2022.
3. The learned appellate court was of the view that the learned trial Judge should have restrained the defendants

from creating any disturbance in the construction of a boundary was on the 'A' schedule property, also covering the 'B' schedule property.

4. It is urged by Mr. Ghosh that apart from setting aside the order of ad interim injunction, no restraint order was passed, although the appellate court had recorded that the petitioners should be restrained from creating any disturbance.
5. By the second order, on an application under Sections 151 and 152 of the Code of Civil Procedure, a correction was made by adding a direction in the nature of an injunction restraining the defendants from using the 'B' schedule property for a period of one month from the date of the order. Further direction was that the order of injunction would automatically be vacated on the expiry of the period of one month, so that the parties could take part in the hearing of the injunction application in the meantime.
6. Mr. Ghosh, learned Advocate appearing on behalf of the opposite parties submits that the defendants do not have any right of user of the passage, namely, 'B' schedule property. The predecessor of the defendants had sold the entire property to the opposite parties, without any easementary right of user.

7. In my reading, the learned appellate court directed final disposal of the injunction application by the learned trial Judge, without there being any order of *status quo*. The injunction upon the defendants from using 'B' schedule property was only for a month from the date of the order, *i.e.* September 15, 2023. Such order has become infructuous and there is no reason why the defendants should challenge the said order before this Court at this juncture.
8. Under such circumstances, the revisional application is disposed of. The learned trial Judge shall dispose of the injunction application upon considering, *prima facie* case, balance of convenience, inconvenience and irreparable loss and injury on the documents to be produced by the respective parties in this regard. The injunction application shall be disposed of within July 31, 2024.
9. Both the parties shall maintain *status quo* with regard to nature, character and possession of the 'B' schedule property, till disposal of the injunction application.
10. The learned trial Judge shall proceed independently and shall not be influenced by this order.
11. Under such circumstances, the revisional application is disposed of.

12. There shall be no order as to costs.

13. Parties are directed to act on the basis of the server copy
of this order.

(Shampa Sarkar, J.)