S/L 6
26.9.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 3929 of 2023
With
CAN 1 of 2023

Shri Dipankar Bose & Ors.
Vs.
Sri Kalinath Sasmal & Anr.

Mr. Soumen Dutta

... for the Petitioners.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
Mr. Tapas Chatterjee

... for the Opposite Parties.

The petitioners were the plaintiffs of Title Suit No.130 of 2008.

The petitioners in the said suit had, inter alia, prayed for a declaration that villagers of Athilagori have acquired title over the suit property by virtue of a customary right. The First Additional Court of learned Civil Judge (Junior Division), Purba Medinipur by the judgment and decree dated June 23, 2023 has dismissed the suit. The petitioners aggrieved by the said judgment and decree have preferred the connected Title Appeal No.40 of 2023 which is pending before the 1st Court of learned Civil Judge (Senior Division), Contai.

In the said appeal, the petitioners had filed an application for injunction praying that the defendant/ respondent no.1 and his agents or representatives be restrained from creating any disturbance in the matter of organizing and holding of Durga Puja and Nitya Puja on the *"ka"* schedule suit till the disposal of the appeal.

The appeal court below by the order impugned has dismissed the said appeal with the following findings:-

> *"The question as to whether the appellants/plaintiffs are having customary6 right to perform Durga Puja and Nitya Puja cannot be decided at this stage of proceeding by this court without going into the merits of the instant Appeal as this Court cannot hold a mini trial at the time of disposing of an application temporary injunction.*
>
> *In view of the aforesaid facts and circumstances, it is the considered opinion of this court that the appellants/plaintiffs have failed to establish the prima facie case with regard to the fact that they are performing Daily puja and annual Durga puja over the suit property for a substantial period of time and the Saradi Club is responsible for performance of the same on their behalf and therefore, the balance of convenience and inconvenience has not titled in their favour. It also appears that the appellants/plaintiffs will not suffer from any irreparable loss and injury and if no appropriate order of temporary injunction is passed at this stage by this Court to protect their interests in respect of the suit schedule property or allowing them to perform Durga Puja over the same."*

This Court in view of the aforesaid finding is not inclined to interfere with the order impugned.

CO 3929 of 2023 along with CAN 1 of 2023 is thus disposed of without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)