

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 335 of 2022

Jahid Alam & Ors.
Vs.
Moula Bakas & Ors.

Mr. Pritam Chowdhury
Mr. M. Nazar Chaudhury
Ms. Priyanka Saha
... For the petitioners

Mr. Soumik Ganguli
Mr. Dilip Kumar Sadhu
Ms. Chandana Chakraborty
... For the opposite parties

1. Affidavit-of-service filed on behalf of the petitioners is taken on record.

2. This revisional application has been preferred by assailing the order dated 7th December, 2021 passed in connection with Miscellaneous Appeal No.01 of 2021 wherein the learned Additional District Judge, 2nd Court, Islampur, Uttar Dinajpur passed an interim order restraining the defendants/petitioners herein from taking possession over the suit property mentioned in the schedule to the plaint and also restrained them from creating any third party interest till the disposal of the temporary injunction. Defendants/petitioners herein were also directed not to disturb the possession of the appellant/plaintiff over the suit property till disposal of

the temporary injunction application before the learned Trial Court.

3. Heard both the learned counsel appearing on behalf of the parties.

4. From the record, it appears that the learned Trial Judge by his order dated 4th October, 2021 passed in connection with Title Suit No.145 of 2021 recorded an order refusing the interim order as prayed for by the plaintiff and that order was assailed before the learned Appellate Court in connection with Miscellaneous Appeal No.01 of 2021.

5. Learned counsel appearing on behalf of the petitioners has submitted that there is no cogent document on record to come to a conclusion that the plaintiff/opposite party no.1 is in possession of the property. In support of his contention, he referred to the proceeding initiated under Section 51(A)4 of the West Bengal Land Reforms Act, 1955 wherein the appropriate authority held the possession over the suit land in favour of the defendants/petitioners herein.

6. In opposition to that, learned counsel appearing on behalf of the opposite parties has submitted that all the plaintiffs/opposite parties herein are in possession of the suit property and that is why the learned Appellate Court rightly promulgated the interim order restraining the defendants/petitioners herein. In support of his

contention, he relied on the proceeding of LA Case No.51/77-78 wherein a portion of the property in Khatian was acquired by the Land Acquisition Collector and compensation was awarded to the plaintiff/opposite party no.1.

7. Both the parties to the suit claimed their title over the suit property in respect of the subject land through their respective registered deeds executed by one Tefejul or Sk. Tefejul. Learned Appellate Court, in the order impugned, recorded the finding that identity of Tefejul or Sk. Tefejul can only be determined at the time of trial. What I find from the impugned order is that the learned Appellate Court only relied on the deeds executed by Tefejul or Sk. Tefejul and the compensation awarded by the Land Acquisition Collector. But in terms of the finding of the learned Appellate Court, those documents cannot boil down to the fact that the plaintiff/opposite party no.1 herein is in possession of the property, whereas under Section 51(A)4 proceeding mandates the possession of the defendants/petitioners herein.

8. So, in this trying situation, the learned Appellate Court ought not to have passed a mandatory order at the ad interim stage while the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure is still awaiting disposal by the learned Trial Court.

9. In the aforesaid view of the matter, I would like to modify the order impugned with a direction upon the

parties to maintain status quo over the subject property and not to alienate the property in any manner whatsoever until hearing of the temporary injunction.

10. Learned Trial Judge is directed to dispose of the injunction application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure as early as possible.

11. I make it abundantly clear that the learned Trial Judge shall not be influenced in any manner whatsoever by the observation of this Court in this revisional application.

12. With the aforesaid observation, the revisional application stands disposed of.

13. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)