

18.
11-06-2025
(Ct. no.06)
debajyoti
(Bench ID
265719)

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

CO 1888 of 2025

Chandra Sekhar Dey
Vs.
Abhishek Kundu & Anr.

Mr. Md. Hossain,
Mr. Subir Banerjee

... For the Petitioner.

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against a judgment and order dated January 03, 2025 passed by the learned Additional District and Sessions Judge, 1st Court, Arambag, District-Hooghly, in Miscellaneous Appeal No.03 of 2024. By the judgment and order impugned, the Miscellaneous Appeal was allowed thereby setting aside the order of injunction passed by the learned trial Judge.

2. The petitioner herein filed a suit for declaration of title and for permanent injunction. In such a suit, the plaintiff filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure. The learned trial Judge by an order dated 07th February, 2024 allowed the application for injunction thereby directing the defendants not to enter into the schedule suit property and make any disturbance in peaceful possession of the plaintiff till disposal of the instant suit. Being aggrieved by such order, the defendants/opposite parties preferred a Miscellaneous Appeal being No.03 of 2024 and the learned Additional District and Sessions Judge, 1st Court, Arambagh, Hooghly, by a judgment and order dated 03rd January, 2025 allowed the said Miscellaneous Appeal.

3. Learned advocate, appearing for the petitioner, submits that the defendants are not in possession of the suit property and the learned trial Judge has specifically found that the plaintiff has right, title, interest and possession in respect of the suit property. He submits that the learned Judge of the First Appellate Court, without considering the reasons assigned by the learned trial Judge, reversed the said finding.

4. Having heard learned advocate for the petitioner and after going through the materials on record, this Court finds that the defendants/opposite parties filed a copy of the agreement along with other documents including the sanctioned plan of the building which was also signed by the plaintiff. The learned Judge of the First Appellate Court, after considering the materials on record, observed that the agreement signed by both the parties was executed on 21st January, 2020 and based upon such agreement, the defendants proceeded with his construction work at his own expense and the plan was sanctioned for such construction on 17th January, 2020 which also contains the signature of the plaintiff as owner of the land. The defendants have also produced the trade license issued in their name and the certificate of the Byabasayee Samity certifying that the defendants are carrying on business since 2020. The learned Judge of the First Appellate Court recorded that the plaintiff has not filed any document since the institution of the plaint case in support of their case. However, considering the materials available on record, the learned Judge of the First Appellant Court was of the view that the plaintiff has failed to make out a *prima facie* case to go for the trial.

5. In the light of the aforesaid observations, the learned Judge of the First Appellate Court was pleased to set aside the order of injunction passed by the learned trial Judge.

6. It *prima facie* appears to this Court that the plaintiff entered into an agreement with the defendants pursuant to which the defendants raised construction and are in possession of the same. The petitioner could not produce any material before the Court to controvert the aforesaid fact.

7. The learned Judge of the First Appellate Court assigned cogent reasons in support of his ultimate conclusion which does not call for interference by this Court.

8. CO 1888 of 2025 stands dismissed.

9. Parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

10. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.)