

M/L 712
17.01.2025
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 2279 of 2024

With
CAN 1 of 2024
And
CAN 2 of 2024

Yeakub Sk @ Sk Yeakub & Ors.
Versus
Sajeda Bibi & Anr.

Mr. Kinsuk Mondal
Mr. Prodip Kundu
Mr. B. K. Singh

... For the petitioners.

Ms. Pampa Dey (Dhabal)

... For the opposite party nos. 1 and 2

1. The present revisional application has been filed, inter alia, challenging the order dated 17th May, 2024, passed by the learned Civil Judge, (Junior Division), 6th Court, Alipore, in Title Suit No. 1069 of 2019, whereby the defendants'/opposite parties' application for local inspection under the provisions of Order XXXIV Rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code") was allowed.
2. The plaint case proceeds on the premise that the suit property originally belong to one Karim Box Sk, son of Late Khosal Sk who enjoyed the suit property as Korfa right holder. The said Karim Box Sk died leaving behind Ahammad Sk as his only legal heir and successor. The said Ahammad

Sk died leaving behind a son, a daughter and a widow, being Abdur Rahim Sk, Samiran Bibi and Pairon Bibi respectively. The plaintiffs/petitioners' case further proceeds on the premise that Samiran Bibi and Pairon Bibi the legal heirs and successors of Ahammad Sk sold and/or transferred their interest in the property unto and in favour of Abdur Rahim Sk., by a deed of sale executed on 26th June, 1991. The said Abdur Rahim Sk since executed two several gift deeds duly registered with the A.D.S.R. Bishnupur, whereunder the suit property was gifted unto and in favour of the plaintiffs/petitioners. The petitioners claim to be in possession of such property on the strength of such gift deeds. According to the plaintiffs/petitioners the defendants/opposite parties who have no right, title or interest in the suit property has been interfering with their possession and in such circumstances the instant suit had been filed, inter alia, claiming a decree for declaring the plaintiffs' rights, title and possession and claiming for permanent injunction. Simultaneously with the filing of the aforesaid suit, the plaintiffs/petitioners had also filed an application under Order XXXIX Rule 1 and 2 of the Code. By order no.3 dated 2nd

August, 2019 the learned Civil Judge (Junior Division), 6th Court, Alipore, was, inter alia, pleased to pass an *ex parte* order thereby directing the parties to maintain *status quo* in respect of nature, character and the possession of the suit property. The defendants/opposite parties have been contesting the suit by filing written statement. On contested hearing, the learned Court by order dated 21st June, 2022, taking note of the fact that both the plaintiffs as also the defendants claim their right, title and interest to the suit property through Ahammad Sk and noting that the plaintiffs claim their interest over the 55 satak while on the other hand the defendants claim ownership in respect of 16½ satak of land out of 55 satak, had directed the parties to maintain *status quo* in respect of nature, character and possession of the suit property till the disposal of the suit. The said order has not been challenged by the plaintiff and is still subsisting. In the interregnum, after devastating cyclone storm Amphan, the opposite parties had filed an application before the learned Court under the provisions of Order XXXIX Rule 7 of the Code on 25th August, 2022, inter alia, praying for appointment of an advocate commissioner with a direction upon him to file a

report as per the schedule referred therein. On a perusal of the aforesaid application it would reveal that the opposite parties claim, during the Amphan cyclone the entire accommodation of the defendants/opposite parties was severely damaged and the defendants are residing in the property without roof on their head which had been blown away during the storm. Having regard thereto, with an object to carry out essential repairs, the aforesaid application had been filed. The said application was duly contested by the plaintiffs. By the order dated 17th May, 2024, the learned Court was inter alia pleased to allow such application by taking note of the stand taken by the defendants in their written statement. Challenging such order, the instant revisional application has been filed, inter alia, on the ground that when the possession in the suit property is in dispute, no application of this nature can be allowed. This revisional application was entertained by an order dated 3rd July, 2024 and an interim order was also passed. The application, being CAN 1 of 2024 has been filed for vacating of the interim order while the application, being CAN 2 of 2024 is for extension of the interim order. Since, the matter pertains to carrying out essential repairs,

this Court has with the consent of the parties taken up hearing of the revisional application itself.

3. Mr. Mondal, learned advocate appearing in support of the aforesaid revisional application would submit that admittedly in this case, the plaintiffs have filed the suit and an order of *status quo* is still subsisting. He would submit that at this stage if the opposite parties are permitted to carry out any construction work in the suit property the same shall seriously prejudice the plaintiffs and would have the effect of altering nature and character of the suit property. Having regard thereto, no relief ought to be afforded in favour of the opposite parties.

4. On the other hand, Ms. Dey, learned advocate appearing on behalf of the defendants/opposite parties would submit that the learned Court vide order dated 21st June, 2022 by taking note of the rival contention and the stand taken by the parties has only passed an order of *status quo*. No order of injunction has been passed. The aforesaid order has been accepted by the plaintiffs. Under the peculiar facts as noted in the petition, especially having regard to the damage caused by the cyclonic storm, the

defendants/opposite parties were compelled to file an application under Order XXXIX Rule 7 of the Code. The learned Judge taking note of the plight of the opposite parties has allowed the same. In the facts noted hereinabove, this Hon'ble Court may be pleased to reject the revisional application so that the order passed by the learned Trial Court may be implemented.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, it would appear that the plaintiffs claim interest in the suit property through Ahammad Sk. Incidentally, the defendants also claim ownership in respect of the suit property through the aforesaid Ahammad Sk. Although, the plaintiffs claim to be the owner in respect of the entire 55 satak, the claim of the defendants is limited to 16½ satak. On a perusal of the written statement filed by the defendants/opposite parties, it would transpire that the defendants claim to be in possession of the suit property and are residing thereat by constructing a mud house comprising of two bed rooms, one kitchen with bath and privy including a *doba*. It has also been averred in the written statement that they are in occupation of the suit

property for the last 70 years. The learned Trial Court taking note of the respective stands of the parties did not pass any order of injunction in favour of the plaintiffs simply because there is a dispute between the parties. I am of the view that the same cannot disentitle the defendants to their right to carry out essential repairs, which shall be, however, subject matter of scrutiny before the learned Trial Court. At this stage it would not be prudent for this Court to make any further observation in this regard save and except noting that the nature of dispute in this case cannot disentitle the opposite parties to maintain a petition for local inspection which would throw light and enable the learned Court to give a finding as to whether in the facts of this case, an order of repair is necessary.

6. Having regard thereto, I am of the view that there is no scope for interference. The revisional application fails and is accordingly dismissed.
7. The interim order passed earlier stands vacated.
8. The connected applications, being CAN 1 of 2024 and CAN 2 of 2024 are also disposed of accordingly.

(Raja Basu Chowdhury, J.)