

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE

1ST COURT, SERAMPORE

Present: Sri Manoj Kumar Rai
Additional Sessions Judge,
1st Court, Serampore, Hooghly.

Criminal Motion No. 39 of 2023

Afsar Ali Molla

.....Petitioner

Versus

Salima Begum and Another

.....Opposite Parties

Order No. 01 dated 03.03.2023

This is an application under section 397/399 of the Criminal Procedure Code, filed by the petitioner being aggrieved by and dissatisfied with the order dated 24.02.2023, passed by the Ld. Executive Magistrate, Serampore, Hooghly, in connection with M. Case No. 170/2023. The application has been filed within the period of limitation. Register the same as Criminal Motion.

The instant motion is taken up for hearing on the point of admission. Perused the impugned order and considered. Let the motion be admitted. Issue notice upon the opposite party No. 1 in both ways and through court only upon the State, fixing **17.04.2023** for S.R., A.D. and appearance.

Ld. Lawyer for the petitioner moves the petition for stay.

Heard the Ld. Lawyer. Perused the instant petition, the affidavit and the documents filed on behalf of the petitioner by firstly. Considered.

Ld. Lawyer for the petitioner submits that the petitioner is co-sharer in respect of the case properties and the Ld. Court below has made an order restraining the petitioner in his own property. The order is illegal and it should be stayed.

On careful perusal of impugned order, it appears that on 24.02.2023, on an application under section 144(2) Cr.P.C. filed by O.P. No. 1, the Ld. S.D.E.M., Serampore has directed O.C., Chanditala P.S. to restrain O.P.s if it is found illegal according to his enquiry. On careful perusal of certified copy of application under section 144(2) Cr.P.C. filed on behalf of O.P. No. 1, it appears that petitioner and O.P. No. 1 are co-shares of the case property which was originally owned and possessed by their father Lt. Anwar Ali Mollah. It has further been alleged that petitioner has mutated his name in L.R. R.O.R. and is trying to construct upon the case property forcefully without any permission from any authority and depriving O.P. no. 1 from her legal share.

From the documents submitted on behalf of the petitioner it is apparent that the petitioner is not absolute owner of the case property. No sanction plan has been produced before the court to establish that the petitioner is making construction after obtaining sanction plan. From impugned order it is clear that O.C., Chanditala P.S. has been directed to restrain the petitioner in case he undertakes any illegal work. If O.P. does not undertake any illegal work, the impugned order is not going to prejudice the petitioner in any way. I am therefore not inclined to make any order of stay under the facts and circumstances of this case. Hence, prayer for stay of impugned order is refused at this stage.

The application for stay is, thus, disposed of.

Dictated & corrected by me.

Sd/- (Sri M.K. Rai)

A.S.J.

Sd/- (Sri M.K. Rai)

Additional Sessions Judge,
1st Court, Serampore