

14. 08.02.2018

Heard learned counsel for the parties on this petition

filed under Section 151 CPC.

2. Mr.Bhuyan, learned counsel for the appellants-petitioner submits that the plaintiff-respondent no.1 has filed suit for setting aside the sale deed executed in favour of defendant no.2, who is the father of the appellants and for permanent injunction against the defendants. According to defendant no.1, who is the grandfather of the appellants had sold the suit property to the father of the appellants (Defendant no.2) for legal necessity. Since the sale, defendant no.2 and present appellants are in possession of the same.

3. Learned counsel for the appellants further submits that learned trial Court has dismissed the suit of the plaintiff by holding that defendant no.2, the father of the appellants, has been possessing the same and the plaintiff has failed to prove his possession thereon. Against that order, an appeal was filed before the learned District Judge, who reversed the order of the trial Court but did not decide specifically about the possession over the suit property. Since the suit land along with the house situated thereon has been in continuous possession of the appellants, the said house requires repair because of its dilapidated condition for which the present petition is filed seeking permission of this Court to repair the same without any prejudice to the rights and liabilities of the parties to be adjudicated and without claiming any right of equity thereon in the event decree is not passed in favour of the appellants.

4. Learned counsel for the respondent-plaintiff submits that the issue with regard to possession has been decided by the lower appellate Court in favour of the respondent-plaintiff. According to him, their father has no right to alienate the suit property exclusively in favour of the father of the appellants. On the other hand, the respondent no.1-plaintiff claims possession over the suit property.

5. Considered the submissions of the learned counsel for the parties and gone through the judgment of the trial Court as well as lower appellate Court. With regard to issue no .5, learned trial Court has held that the father of the appellants is in possession of the suit land and the house situated thereon. Lower appellate Court has discussed the said issue but had not given clear cut finding on that issue.

6. Pending adjudication with regard to the possession of the suit property and since the father of the appellants has been in possession of the same and the house is in a dilapidated condition, there is justification with the prayer of the learned counsel for the appellants. Moreover, the appellants undertake to the effect that they would not claim any right of equity thereon in the event the suit is decreed against them. Accordingly, permission is accorded in favour of the appellants to repair the house temporarily without any prejudice to the rights and liabilities of the parties to be adjudicated and without any right of equity to be claimed by the appellants in the event of dismissal of the instant second appeal.

The misc. case is disposed of accordingly.

Dr.D.P.Choudhury, J

15. 08.02.2018

List this matter on 8.3.2018.

Objection, if any, to this application may be filed in the meantime.
Issue urgent certified copy on proper application.

Dr.D.P.Choudhury, J

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