

29.01.2025
Item No.21
Ct. No. 30
Aloke

CO 4009 of 2024

Mohammed Kuddus Ali
Vs
Asgar Ali & Anr.

Mr. Sayan Chatterjee
Mr. Samirul Hassan

... for the petitioner

The present civil revisional application has been preferred against the order dated May 12, 2022 passed by the learned Additional District Judge, 4th Court, Barasat, North 24 Parganas in Misc. Appeal No. 327 of 2014.

From the materials on record it appears that the trial Court passed an order of status quo on September 14, 2012, considering the documents filed by the plaintiff and also considering the case of the defendant who also is armed with the documents in his favour and on hearing the parties and also considering the fact that **the title of the property is prima facie in dispute.**

The appellate Court vide the order under revision dated 12.05.2022 disposed of the Misc. Appeal preferred by the defendant challenging the order of status quo by invoking the order of status quo, by setting aside the order of status quo and directed the trial Court to proceed with the suit expeditiously.

It appears from the **order dated 06.04.2022** that the appellate Court **had heard both the parties** and

had reserved the case for judgment on 22.04.2022. Finally, the judgment was delivered on 12.05.2022.

“As during hearing of the Appeal none appears on behalf of the respondent so I had no opportunity to hear from the side of respondent. I find that Ld. Court below while allowing the petition U/o. 39 Rule 1 and 2 CPC it was observed that as both plaintiff and defendant raised claim about the ownership of the property as such Ld. court below opined that order of status quo should be passed in respect of the suit property.”

The said findings of the appellate Court is clearly not in accordance with the order dated 06.04.2022 when both the parties were heard. Such finding of the appellate Court is clearly erroneous.

Another relevant finding of the appellate Court is at page 3 of the said judgment wherein the Court held as follows :

“It appears that Appellant able to show his title deed in respect of the suit property and the documents goes to show that it is the Respondent/plaintiff who sold the suit property to the Appellant at a consideration of Rs.33,000/-. Though respondent/plaintiff filed the case for declaration and injunction in respect of the suit property but at this stage he has no documents to establish his claim”.

From the said findings it appears that the appellate Court sat in trial and came to a finding that the title deed stood in favour of the appellant.

Learned counsel appearing for the petitioner/plaintiff submits that the appellate Court may be directed to dispose of the appeal afresh on hearing both sides.

But considering the findings as above, the purpose will not be fulfilled.

As the revision is required to heard, the petitioner is directed to serve upon the opposite party and file affidavit-of-service on the next date of hearing.

Let the matter appear in the monthly list of March, 2025.

Pending hearing the proceedings before the trial Court shall be stayed and **there shall be an order of status quo in respect of the suit property being the scheduled property in the plaint till disposal of the revisional application.**

(Shampa Dutt (Paul), J.)