

D/L
Item No. 23
17.10.2023
KOLE

**FMA 614 of 2017
With
IA CAN 1 of 2017 (Old No. 2556 of 2017)
With
IA CAN 3 of 2023**

**Debranjan Banerjee
-Vs.-
Smt. Arati Banerjee & Ors.**

*Mr. Siddhartha Mitra, Sr. Adv.
Mr. S. Chakraborty,
Mr. A. Mukherjee*

...for the appellant.

Mr. Malay Kumar Roy,

...for the respondent nos. 6 to 8.

In Re: IA CAN 3 of 2023:

The basic dispute between the two brothers presently is in relation to Flat No. 52 in Ananya Cooperative Housing Society situate at 17 Lower Range, PS. Karaya, Kolkata 700017.

During his lifetime, the original owner of the flat, Dr. Banerjee had nominated his second son Deb Ranjan as nominee. A deed of settlement had also been executed by the father, wherein the mother was named as a trustee. We are told that the deed of settlement also provided that upon the death of the mother, Deb Ranjan will be entitled to the flat absolutely.

Learned Senior Advocate for Deb Ranjan says that Tapas Ranjan has put his own padlock on the main door of the flat although he does not reside there. He has no right to keep the flat in his possession. The Cooperative Society

should put its own padlock on the entrance door of the said flat.

We find from the affidavit of service filed in Court today that Tapas Ranjan has been served with notice of this application. However, he is not represented.

We are not inclined to pass an order directing the Housing Society to put its own padlock to the entrance door of the said flat today without giving another opportunity to Tapas Ranjan to place his submission before us.

However, we restrain Tapas Ranjan from dealing with the said flat in any manner whatsoever, including creating any third party right or putting anybody in possession thereof. It is submitted on behalf of both the Housing Society and Deb Ranjan that Tapas Ranjan visits the said flat at regular intervals and creates nuisance for the other people who reside in the housing complex. We make it clear that Tapas Ranjan shall not indulge in any such conduct as may disturb others in the housing complex.

Learned Counsel for the appellant and the Housing Society suggest that the appeal may be heard out. The respondent no. 1 has passed away during the pendency of this appeal. Let the name of the respondent no. 1 be deleted from the cause title of the appeal papers. Further, let Tapas Ranjan Banerjee, residing at 77, Kankulia Road, Kolkata 700029, son of Arati Banerjee, the deceased respondent, be added as respondent in the appeal. We are told that Arati Banerjee is survived by three sons one of whom has renounced the world. Deb Ranjan and Tapas Ranjan are the

only other legal heirs. Let the Department carry out necessary amendment to the cause title of the appeal papers by November 10, 2023, and issue notice of appeal to the added respondent.

Let requisite number of informal paper books be prepared containing all papers that were available before the learned Single Judge and also pleadings that have been filed before us by November 20, 2023. Notice of appeal on the Housing Society is deemed to have been waived with since the Society is represented. All formalities are dispensed with.

A copy of this order be served on Tapas Ranjan Banerjee and affidavit of service be filed in court on the next date.

IA No. CAN 3 of 2023 is, accordingly, disposed of.

List the appeal and the connected application, if any, on November 28, 2023 under the heading “Hearing”.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)