

DL. October 1,
48. 2020

F.M.A.T. 375 of 2020
With
CAN 1 & 2 of 2020

Smt. Rajlakshmi Syam & anr.
Vs.
Smt. Sharbani Nandi & ors.

Mr. Mahendra Prasad Gupta,
Mr. Debojyoti Deb,
Mr. Abhishek Banerjee,
...for the appellants.

The defendants in a suit relating some immovable properties complain of an ex parte ad interim order and seek to assert that the allegations contained in the plaint and the supporting petition are contrary to record. In essence, the case made out in the appeal is that the plaintiff carried a false case to the trial court and despite the plaintiff being aware that certain properties formerly standing in the name of the plaintiff's recently deceased father had been gifted by the father to the sister of the plaintiff, an impression was given to the trial court that all properties were joint and that such properties had to be preserved so that the other heirs of the recently deceased father of the plaintiff could not alienate the same.

The order impugned dated July 28, 2020 is sufficiently reasoned. It is elementary that a court has to go on the basis of the allegations in the plaint and the supporting petition. On the basis of how the case may have been presented before the trial court, the order appears to be justified.

It is an entirely different matter that a false case may have been made out. In such a scenario, the remedy of the aggrieved defendant is to file an application under Order XXXIX Rule 4 of the

Code and not necessarily an appeal against the ex parte ad interim order. The test which has to met in this appeal is whether upon the statements contained in the plaint and the supporting petition being taken as true and correct, the order could have followed. In this limited scope, the appellate court cannot entertain an allegation that the statements contained in the plaint were incorrect or false.

For the reasons aforesaid, the appeal is disposed of without going into the allegations levelled by the appellants. It will be open to the appellants to apply for vacating the order upon indicating the perceived false statements that had been carried by the plaintiff to the trial court. In the even such an application under Order XXXIX Rule 4 of the Code is filed within a period of one week from date, the trial court will do well to dispose of the same within a period of six weeks from the date of receipt thereof.

The observations here are tentative and should not work to the prejudice of any party.

FMAT 375 of 2020 and the connected applications therein are disposed of at the admission stage.

There will be no order as to costs.

(Sanjib Banerjee, J.)

ar/dns

(Aniruddha Roy, J.)