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FMAT 467 of 2020

Mandira Sen

Vs-

Ilona Sen

with

IA No. CAN 1/2020

(Via Video Conference)

Mr. Hiran Chatterjee

..... for the appellant.

It appears from record that no Caveat has been lodged as against the impugned order under appeal as noted by the Registry.

The Registry has pointed out certain defects in the appeal, the learned advocate for the appellant/plaintiff undertakes to cure the same by November 18, 2020.

This appeal is arising from the impugned ad interim order No.2 dated October 13, 2020 passed by the learned Civil Judge (Senior Division), 9th Court, Alipore, South 24-Parganas whereby the learned Trial Court was pleased to refuse to grant an ad interim order of injunction as prayed for by the plaintiff in a partition suit being Title Suit No. 561 of 2020.

The appellant before this Court is the plaintiff in the said partition suit pending before the learned Trial Court where her principal prayer is for partition of her

ancestral immovable property situated at 21/A, Aswini Dutta Road, Calcutta-700 029. The appellant/plaintiff states that she is in occupation and possession of the ground floor of the said property. Her mother was living on the first floor of the same and after the demise of her mother some of the co-sharers had put on padlocks on the first floor where the mother of the plaintiff was staying. It is contended that the co-sharers are continuously threatening the appellant/plaintiff and the appellant/plaintiff apprehends that she might be dispossessed and thrown out from the ground floor of the premises where she is staying.

Learned Counsel for the appellant/plaintiff drew attention of this Court to various paragraphs from the plaint filed in the said partition suit which is annexed to the stay petition. Similarly, he drew attention to relevant paragraphs from the injunction application filed before the learned trial Court which is also made part of the stay petition before this Court. Specific averment has been made at paragraphs 15 and 16 of the said injunction application to the effect that after the demise of the mother of the plaintiff the other co-sharers had put on padlocks on the first floor where the mother was staying and the appellant's possession in the property is being disturbed and/or sought to be disturbed.

From a perusal of the impugned order it is also appearing that the learned trial Court had noted that the

appellant/plaintiff is residing at and in possession of the ground floor of the suit property along with her family members.

It is the settled law that in case of a partition suit the co-sharers' right and the status should be maintained in the joint property of which the co-sharers claim partition in the event there is any chance of infringement.

Since the appeal has arisen at an ad interim stage the prima facie satisfaction for granting an ad interim injunction has to be arrived at on the basis of the averments made in the pleadings and the materials in support thereof produced before the Court.

Learned Counsel for the appellant also drew the attention of this Court at Page 65 of the stay application which is a complaint dated October 6, 2020 made by the appellant/plaintiff before the local police station making some allegations against the cosharers.

In view of the above and upon perusing the materials on record, this Court is of the view that in the facts and circumstances of this case an ad interim protection should be granted to the plaintiff/appellant and accordingly there shall be an order of status quo with regard to the possession of the appellant/plaintiff in respect of the ground floor of premises No. 21/A, Aswini Dutta Road, Calcutta-700029 till the injunction application is finally disposed of by the learned trial Court.

It is further made clear in the event the defects in appeal are not cured by November 18, 2020, the present order of status quo shall automatically be vacated.

In any event, the learned Trial Court will be free to proceed with the injunction application and dispose of the same on its merit and all points are left open to the parties to argue.

In view of the above both the appeal and application being **FMAT 467 of 2020** along with **CAN 1 of 2020** stand accordingly **disposed of**.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for be supplied to the parties on usual undertaking.

(Aniruddha Roy, J.)

(Subrata Talukdar, J.)