

DL. December
35. 1, 2021

Through Video Conference

F.M.A. 139 of 2017

Re: CAN 11212 OF 2016 (stay)
filed on November 21, 2016.

The appellants are not represented, nor any accommodation is prayed for.

This appeal has arisen out of an order disposing of an application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure filed by the plaintiffs/respondents along with an application filed under Order XXXIX, Rules 4 of the Code of Civil Procedure by the defendants/appellants. The learned trial judge, on consideration of the materials on record, prima facie, came to the conclusion that joint interest of the plaintiff no. 2 in respect of plot no. 27 is apparent and that a co-sharer could not claim exclusive possession over any portion of the property till partition.

The settled position in law having been noticed and applied in the instant case correctly, we are of the view that the discretion exercised by the trial court does not call for any interference.

In view thereof, the appeal stands dismissed. However, we direct the learned Civil Judge (Senior Division), Second Court at Baruipur, North 24-Parganas, to expedite the hearing of the suit and to dispose of the same preferably within one year from the date of communication of this order.

In view of dismissal of the appeal, nothing remains in

the application for stay and the same is also disposed of.

There will be no order as to costs.

Office is directed to communicate this order to the learned Civil Judge (Senior Division), Second Court at Baruipur, North 24-Parganas, immediately.

(Soumen Sen, J.)

dns

(Ajoy Kumar Mukherjee, J.)