

08.12.2021
Court No.8
Item No.22
SB / AB

FMAT 25 of 2021
CAN 1 of 2021
CAN 2 of 2021

Sanjoy Maji & Anr.
Vs.
Sri Chittaranjan Sarkar & Ors.

Mr. Debasish Kundu For the Appellants

Mr. S. Bhattacharyya ... For respondent no. 2

Re : CAN 1 of 2021 (Section 5)

Sufficient cause has been shown for not being able to file the memorandum of appeal within the period of limitation. The application for condonation of delay in preferring the appeal is allowed.

CAN 1 of 2021 is disposed of.

In a suit for declaration and cancellation of a deed of sale, the plaintiff filed an application under Order 39 Rule 1&2 of the Code of Civil Procedure against the defendants praying inter alia for an order of injunction restraining them from alienating and / or encumbering the property in question.

The plaintiff contended before the learned Court that the appellant abused its authority by unlawfully selling parts of the plaintiff's land taking advantage of the illiteracy of the plaintiff and in the event the respondents are not restrained from dealing with and / or changing the nature and character of the

property in question the plaintiff would suffer irreparable injuries and prejudice.

Learned counsel appearing on behalf of the appellants drawn our attention to the order passed by a co-ordinate Bench on 15.11.2019 in connection with an appeal by respondent no. 2 herein to show that the said order is restricted to 32 decimal of the land only and the rest of the land there is no adjudication and accordingly, the order passed by the learned trial judge suffer from perversity.

Indubitably, the suit is for delivery and cancellation of an instrument. The plaintiff prima facie is the owner of the property. The execution of the power of attorney and its legal effect needs to be considered at the time of appropriate stage of trial even the co-ordinate bench is fully alive on such occasion. But having regard to certain changes that have to be taken place before the ad interim order was passed, permitted Sanjit to remain possession of 32 decimal plots on the basis of the evidence available, with a rider that Sanjit would not dispose of or alienate or create third party interest in respect of said plots of land. The said order clearly secured the right of the plaintiff.

In the instant case in so far as, rest of the land is concerned ownership is claimed by the respondent no. 1 and the appellant contends that he is in possession of some portion of the land along with his mother and he apprehends dispossession. However, from the impugned order, we find that such apprehension is clearly misplaced. The learned trial court has taking into consideration all the relevant factors in directing

the parties, to maintain status quo in the scheduled mentioned properties till the disposal of the suit.

Unlike Sanjit there was no evidence to show that the appellants have any right, title and interest over the property in question. The said claim of the appellants is based on the power of attorney which is under cloud.

In view thereof, we do not find any reason to interfere with this order passed by the learned judge, the appeal and application stands dismissed.

The learned trial court is requested to dispose of the suit as expeditiously as possible preferably within a period of one year from the date of communication of this order.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)