

27.01.2021
SL No.09
Court No.12
(gc)

FMAT 123 of 2019
With
CAN 1 of 2019
(Old No: CAN 1191 of 2019)

Durgadas Roy
Vs.
Gurupada Roy & Ors.

(Via Video Conference)

Mr. Nilendra Narayan Roy,
Mr. Nitish Samanta,
Mr. Abhinaba Dan,
...for the Appellant.

The appeal is arising out of an order passed by the learned Civil Judge (Senior Division), Bankura in connection with an application for temporary injunction filed by the plaintiff/appellant under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure. The plaintiff filed a stay application in a partition suit. The plaintiff claimed half share in the suit property. The plaintiff also admitted that the defendants are also having half share in the suit property. The plaint also discloses the fact that the plaintiff is in occupation of a demarcated portion of the property. The plaintiff, however, alleged that the defendants tried to trespass and/or encroached upon the portion which the plaintiff is enjoying in the suit property. The plaintiff filed an application for appointment of the Advocate Commissioner. The said prayer was allowed on 20th March, 2018. The learned Trial Judge

considered the report filed by the Commissioner wherefrom it appears that there has been no encroachment of the suit property by the defendants. It appears that the plaintiff is in occupation of the demarcated portion and the defendants are also occupying a portion since long.

In a suit for partition even after declaration of the share, Court can allow respective parties to occupy their respective possession subject to adjustment by payment of owelty. Having regard to the fact, the plaintiff had failed to demonstrate that there has been any encroachment on any portion of the plaintiff which appears to be absurd as the plaintiff and the defendants each have interest in every inch of the property unless it is partitioned, we do not find any reason to interfere with the order passed by the learned Trial Judge.

The appeal being FMAT 123 of 2019 and the stay application being CAN 1 of 2019 (Old No: CAN 1191 of 2019) stand dismissed.

However, there shall be no order as to costs.

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

(Aniruddha Roy, J.)

(Soumen Sen, J.)