

18.03.2021
SL No.4
Court No.12
(gc)

**FMAT 194 of 2021
With
CAN 1 of 2021**

**Smt. Gangamani Maity
Vs.
Sri Mani Bhusan Maity**

(Via Video Conference)

Mr. Soumik Ganguli,
Mr. Sayan Roy,
...for the Petitioner/Appellant.

We have heard the learned Counsel for the appellant.

We are, prima facie, of the opinion that the application under Section 151 of the Code of Civil Procedure is not maintainable when there is a clear provision in the Code of Civil Procedure under Order 39 Rule 1 and 2 to pray for self-same reliefs.

Be that as it may, we request the learned Trial Judge to treat the Section 151 application as an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure and consider the prayer for ad-interim order of injunction in view of the fact that it has been clearly alleged by the plaintiff/appellant that she is married to the defendant and the documents disclosed in this petition which, inter alia, include the record of rights, Pan Card which prima facie show that the plaintiff is the wife of the defendant. However, the declarations made in such documents are required to be gone into at the appropriate stage.

We have been informed that the application under Section 151 of the Code of Civil Procedure is posted on 13th August, 2021 for SR/AD/Appearance.

In view of the urgency shown, we direct the learned Civil Judge (Senior Division), 1st Court, Contai to consider the prayer for ad-interim order of injunction upon notice to the defendant. The matter may be preponed only for the purpose of considering the prayer for ad-interim injunction. In view of clear statement made by the appellant that she is presently residing in the matrimonial home and there is every likelihood of her being dispossessed from the matrimonial home, we direct the parties to maintain status quo as to possession in the suit premises for a period of 60 days or until this matter is taken up for consideration of the prayer for ad-interim order by the Trial Judge whichever is earlier.

We make it clear that the appropriate notice should be served upon the defendant before considering the prayer for ad-interim injunction. We direct the appellant to serve a copy of the plaint along with injunction application and a copy of this order by Speed Post with Acknowledgement Due within one week from date and shall make an application before the Civil Judge (Senior Division), 1st Court, Contai for consideration of the prayer for ad-interim order of injunction upon prior notice to the respondent.

In the event the respondent, in spite of notice, fails to appear, the learned Civil Judge (Senior Division), 1st Court,

Contai upon satisfaction being recorded that there has been a proper service upon the defendant, shall consider the prayer for ad-interim order of injunction on the basis of the material on record and pass necessary order uninfluenced by the observation made by us in this order.

The appeal being FMAT 194 of 2021 and the injunction application being CAN 1 of 2021 are, accordingly, disposed of.

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.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)