

16.11.2021
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F. M. A. 3 of 2021

Madhusudan Dey
Vs.
Nilmony Saha and others

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray
... for the appellant.

Order dated 27.01.2020 passed in Title Suit No. 05 of 2020 refusing ad interim order of injunction has been assailed before us.

Appellant-plaintiff had filed a suit for partition and sought for injunction upon the defendants not to transfer the suit property. The trial court after observing a prima facie case is made out directed issuance of notice upon the defendants and fixed the matter for hearing of the injunction application. Recording that there is no extreme urgency, ad interim order of injunction was refused.

Learned lawyer appearing for the appellant submits that the trial court erred in refusing ad interim order of injunction while observing a prima facie case is made out.

While considering a prayer for ex-parte ad interim injunction, the Court in addition to prima facie case must consider whether a case of extreme urgency justifying such order is made out. Materials placed before us do not show that there is any immediate apprehension of transfer of suit property by the respondents.

Thus, we are of the opinion there is no illegality in refusal of ex parte ad interim order of injunction. However, it is open to the court below to consider the all aspects of the matter including balance of convenience and inconvenience of the parties in a suit for partition at the time of hearing of injunction application.

Thus, we are not inclined to interfere with the impugned order. However, we request the trial court to dispose of injunction application after due notice to the respondents, who shall file their written objections, if any, to the injunction application within a fortnight of receipt of such notice and the injunction application shall be disposed of preferably within three months from the date of communication of a copy of this order without granting unnecessary adjournment to either of the parties.

With the aforesaid observations, F. M. A. 3 of 2021 is disposed of.

In view of disposal of the appeal, connected application, if any, is also disposed of.

There will be no order as to costs.

(Bivas Pattanayak)

(Joymalya Bagchi, J.)