

09.03.2021
SL No.5
Court No.12
(gc)

FMAT 291 of 2020
With
CAN 1 of 2020
(Old No: CAN 2555 of 2020)
With
CAN 2 of 2021

Anindya Sundar Maji
Vs.
Asish Mondal & Ors.

(Via Video Conference)

Mr. Sharanya Chatterjee,
Mr. Nepesh Majhi,
...for the Appellant.

Re: CAN 1 of 2020 (Old No: CAN 2555 of 2019)

Sufficient cause is being shown for not being able to prefer the appeal within the period of limitation.

The delay of 3 days in preferring the appeal is condoned.

CAN 1 of 2020 (Old No: CAN 2555 of 2020) is disposed of.

Re: FMAT 291 of 2020
With
CAN 2 of 2021

The appeal and the application are taken up together at the admission stage and disposed of by this common order.

The appeal is arising out of an order of injunction passed by the learned Trial Judge in a partition suit being Title Suit No.58 of 2015. In opposing the prayer for partition forming the schedule to the plaint, the present appellant raised a defence of partial partition in order to curb out few

of the properties forming part of the partition suit and urged an oral partition was entered into between the parties prior to 1963. The learned Trial Judge on consideration of the materials on record has observed that though the defendants have raised partial partition but have not agitated which plots, though are partible, are intentionally kept outside of the hotchpotch of this suit. Moreover, the Trial Court was not satisfied with the plea of partial partition in absence of any cogent evidence being made available to the learned Trial Judge. At the interlocutory stage with regard to the suit for partition, the Court has to preserve its right, title and interest over the properties meaning thereby the co-sharers and till their rights are determined.

Any third party interest during the pendency of the suit would defeat the rights of the parties which would likely to be affected by such action. Moreover, the other co-sharer is to have a right over every inch of the property in question unless there is cogent evidence to show that some of the properties or a property forming the subject matter of partition suit has been partitioned.

Taking into consideration the aforesaid factors, we are of the view that the learned Trial Judge was justified in directing the plaintiff and the defendants to maintain status quo in respect of the nature, character and possession of the suit properties till the disposal of the suit. 29th November, 2019 was fixed for framing of issues. In the event the suit is otherwise ready for hearing as it appears to be so, we are

requesting the Civil Judge (Senior Division), 1st Court, Asansol to dispose of the suit as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

This order shall also not prevent the parties to refer the disputes to Mediation for an amicable settlement of their disputes.

With the aforesaid observation, the appeal being FMAT 291 of 2020 and the application for stay being CAN 2 of 2021 stand disposed of.

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

(Subhasis Dasgupta, J.)

(Soumen Sen, J.)