

22.03.2021
SL No.3
Court No.12
(gc)

**FMAT 233 of 2021
With
CAN 1 of 2021**

**Ram Sagar Poddar
Vs.
Prem Shankar Poddar**

(Via Video Conference)

Mr. Meghnad Dutta,
Mr. Abhishek Shaw,
...for the Appellant.
Mr. Amrita Lal Dhar,
...for the Respondent.

By consent of the parties, the appeal and application are taken up together and disposed of by this common order.

The appellant filed an application under Section 151 of the Code of Civil Procedure along with a petition under Order VI Rule 17 of the Code of Civil Procedure. The said application was filed in a suit instituted by Prem Shankar Poddar against Ram Sagar Poddar in Title Suit No.373 of 2016.

Prem Shankar Poddar filed a suit against the present appellant claiming, *inter alia*, title in respect of the suit property on the basis of a Family Settlement. In the said proceeding, Prem Shankar Poddar filed an interlocutory application praying, *inter alia*, for a decree of declaration. Prem Shankar Poddar is the absolute owner of the office space measuring about 950 sq.ft. on the ground floor of KBR Complex, Hochi Minh Sarani, Kolkata – 700 071. Such claim is based on a Family Settlement dated 16th February,

2012. Prem Shankar Poddar claimed that the said settlement was acted upon and the plaintiff is in possession since then. In the said suit, an order was passed by the learned Trial Court on 28th September, 2017 since corrected on 8th November, 2017 by which the application for temporary injunction was allowed. The defendant was restrained from disturbing the possession of the plaintiff in respect of the suit property as mentioned in the Schedule to the petition till the disposal of the suit. The Trial Judge relied upon the Family Settlement entered into by and between the parties on February 16, 2012.

The learned Trial Judge has also taken into consideration that, *prima facie*, the present appellant did not dispute the Family Settlement but contended that the respondent did not pay 50% of the sale proceeds in respect of the suit property in terms of the Family Settlement and in view thereof, the Family Settlement has lost its force. This was not accepted by the learned Trial Judge in the order dated 8th November, 2017. The said order was accepted by the said parties to the suit.

The plaintiff in the suit was found to be in possession. The learned Trial Judge has taken note of the fact that the grievance of the defendant is in relation to 50% of the sale proceeds of Hochi Minh Sarani property. The learned Trial Judge was of the view that the defendant cannot approbate and reprobate with regard to the Family Settlement. It was on such consideration, the order of injunction was passed. The said order is not under

challenge. The appellant subsequently filed a suit being Title Suit No.718 of 2016. The said suit was filed within few months from the date of filing of the prior suit involving same parties. In the suit, the present appellant has prayed for a declaration that the appellant is the lessee/owner in respect of the suit property including 950 sq.ft. area/office space. Subsequent to the filing of the said suit, the present appellant has filed an application for temporary injunction. In the said application, the present appellant has prayed for an order of injunction restraining the respondent in this proceeding from interfering with the possession of the appellant in respect of the entire premises including 950 sq.ft. office space. The said relief claimed in the subsequent suit is also claimed by the respondent in his earlier suit. In view of the fact that the earlier application for injunction was decided in favour of the present respondent, the learned Trial Judge dismissed the said application for temporary injunction. The present appellant accepted the said order. Almost after a period of three years, an application was filed by the present appellant in the Title Suit filed by the respondent making allegations that the property has now been alienated or attempted to have been alienated by the respondent.

It is interesting to know that in Paragraph 19 of the earlier injunction petition, similar averment was made by Ram Sagar Poddar, however, the same was not accepted by the Trial Court under the garb that another attempt is made by the plaintiff, namely, Prem Shankar Poddar, to alienate

the suit property, this time an application under Section 151 of the Code of Civil Procedure was filed knowing fully well that the second application seeking self-same relief cannot be permissible in law. The claim for alienation was unsubstantiated. The learned Trial Judge after taking into consideration the earlier orders passed in the proceeding and applying the principle of *res judicata* that may operate between the parties at the interlocutory stage and should not be allowed to be re-agitated declining reliefs claimed by the appellant, directed that both the suits to be heard together. We also feel that analogous hearing of the two suits is required. Under such circumstances, we are not inclined to interfere with the order passed by the learned Trial Judge.

Learned Counsel for the respondent has submitted that the property has already been transferred and/or alienated in the year 2013 after the Family Settlement was acted upon, this, however, is disputed by the appellant. For the present situation, we are not concerned with the said issue.

Moreover it is pertinent to mention that the self-same prayer for injunction at the instance of the present appellant was refused by the learned Trial Judge on 8th November, 2017.

It is needless to mention that any alienation and/or transfer during the pendency of the suit shall abide by the result of the suit and any such transfer shall not create any

equity in favour of transferee and/or alienee as the case may be.

Considering the fact that the dispute is between the two brothers, we feel that the matter should be resolved through Mediation. We direct the parties to approach the Member Secretary, Mediation Centre, with a copy of this order forthwith. The Member Secretary, Mediation Centre, is requested to take immediate steps for appointment of the Mediator in consultation with the Mediation Committee. We also direct the parties to cooperate with the Mediator to resolve their disputes amicably.

We request the learned Mediator, to be appointed by the Member Secretary, to conclude the proceeding within a period of two months from the date of his appointment and file a report in Title Suit No.373 of 2016.

The learned Trial Judge may adjourn the hearing of the suits and incidental proceedings for a period of two months in order to enable the parties to the suit to make an attempt to resolve their disputes through mediation.

With the aforesaid direction, the appeal being FMAT 233 of 2021 and the connected application being CAN 1 of 2021 are disposed of.

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

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)