

Ct. 17
Item No.11
07.04.2021
(suvendu)

**FMAT 264 OF 2021
With
CAN 1 OF 2021**

(Through Video Conference)

**Priyaranjan Majee
Vs.
Srikrishna Kumar Maji & Ors.**

Mr. Amitava Mukherjee
Mr. R. Jana
Mr. A. Ghosh

.....for the appellant

The appeal arises out of an ex parte ad interim order dated 19th November, 2020 in a suit for partition in which the learned trial court on consideration of the record of rights and other documents made available at the time of moving the application for ad interim injunction recorded its satisfaction with regard to the entitlement of the plaintiff on 2 decimals of land from which there was an apprehension that the plaintiff would be dispossessed and on such consideration, granted a limited ad interim order till 3rd December, 2020 to the effect that the parties and the plaintiff should maintain the prevailing *status quo* in the suit land so that the plaintiff would not be dispossessed from his share in the suit land.

Our reading of the order is that the plaintiff should not be dispossessed from 2 decimals of land as stated in

the plaint and the injunction petition. We have been informed that the ad interim order of injunction was extended from time to time.

The grievance of the learned counsel for the appellant is that while the plaintiff has constructed a two storied building on the demarcated portion of the land in question, the plaintiffs by making concocted stories prevented the appellant from making construction on the land over which the appellant is in possession. However, this fact has not been brought to the notice of the learned trial court and accordingly, it is unfair for us to decide as to whether the appellant should be allowed to make construction on the land over which he claimed to be in possession similar to that of the plaintiffs. We feel that such a case ought to be made out before the learned trial court. In a partition suit the courts have permitted construction by co-sharers on certain conditions. In absence of such case being made out before the trial court, we are unable to consider such prayer at this stage. We do not find any reason to interfere with the impugned order. This order shall not prevent the appellant to make such prayer if advised before the trial court.

With such observations we disposed of the appeal and the application.

(Kausik Chanda, J.)

(Soumen Sen, J.)

