

FMAT 283 of 2021
with
IA No. CAN 1 of 2021

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(Satya Prakash Gupta & Anr. Vs. Chandra
Prakash Gupta & Anr.)

Mr. Souradipta Banerjee
Mr. Subhojit Mullick
Ms. Nandita Bhattacharya

.....**For the appellants**

Mr. Siddharta Banerjee
Ms. Shalu Gupta

.....**For the respondents**

By consent of the parties the appeals and the applications are taken up together and disposed of by this common order.

The plaintiff and the defendant no. 1 are the full brothers. The mother of the plaintiff and the defendant no. 1, namely, Shakuntala Devi, was the original lessee under the registered deed of lease dated 18th August, 1980. She died intestate.

The dispute arose between the brothers with regard to the possession and of the leasehold property. The plaintiff filed a suit for declaration and injunction alleging that the defendants are interfering with the possession of the plaintiffs and are misappropriating the usufructs of the leasehold property. The plaintiffs approached the learned trial Court. The present appellants are the defendants in the suit. The present appellants contended

before the learned trial court that the plaintiffs have the right, title and interest of the leasehold property as they are not the lessees inasmuch as by reason of the Memorandum of Understanding (hereafter the 'MOU') between the plaintiffs and the appellants, the appellants are entitled to their rights, title and interest in respect of the property in question. The learned trial Judge upon considering the relevant clauses in the lease deed where the lessee includes her heirs and in any event under the Hindu Law rejected the contention of the appellants.

The learned counsel appearing on behalf of the appellants submits that having regard to the MOU executed between the parties and the fact that the MOU was acted upon by the parties, it is no more open for the plaintiffs to pray for appointment of receiver over the suit property. It is submitted that essential facts for appointment of receiver were missing in the plaint.

Our attention is drawn to clauses (D) and (H) of the MOU in support of the submissions made on behalf of the parties.

Mr. Banerjee, learned counsel appearing on behalf of the plaintiffs has submitted that the MOU has been breached inasmuch as his client has prayed for declaration that the MOU is null and void. Our attention is drawn to the letter issued by the appellants on 14th October, 2020. The plaintiff no. 1 was directed to deliver the vacant and peaceful possession of the flat presently

under the occupation of the plaintiffs. It is, thus, submitted that the aforesaid letter would show that the terms of the MOU has been breached in any manner.

Although the said MOU is an unregistered document both sides have placed reliance on the said MOU in support of their contention. It appears from the MOU that the plaintiff No. 1 has relinquished his right, title and interest over the said property save and except the two rooms including toilet on the second floor of the suit property.

It is not in dispute that the plaintiff and the defendant no. 1 are full brothers. All are entitled to enjoy the property unless there is an agreement showing relinquishment of right by one of the parties in respect of the said properties. The usufructs of the property are to be fully enjoyed by the parties unless otherwise agreed. There cannot be any dispute that each of the parties have 1/3rd share in the property and its usufructs.

Learned Counsel for the appellants in all fairness has submitted that the appellants are collecting the rents, but he dispute the quantum of the rents as alleged by the plaintiffs. Learned Counsel has further submitted that the terms of the MOU has been acted upon as the plaintiffs who are provided a flat at Kaikhali for a period of five years and the plaintiffs after enjoying the said property for the said period is not making a claim in respect of the suit property which the plaintiffs had relinquished in terms of

the MOU. The learned Counsel has also submitted that the existence of the MOU is not in dispute and with an ulterior motive the plaintiffs have filed and the suit for declaration that the said MOU is void and nonest in law.

The appellants are aggrieved by the order of appointment by the receiver to collect the rents. In view of the fact that there is no dispute to the entitlement of share of the plaintiffs in the suit property, the plaintiffs are entitled to usufructs thereof unless there has been a relinquishment of such right. Under the MOU even if provision is made for the plaintiffs in the Kaikhali property, the plaintiffs have the right to use one room during their lifetime. The life interest of the plaintiffs as to the enjoyment of the suit property is acknowledged in the MOU. The validity of the MOU is in dispute. Moreover, we find that the plaintiffs have been served with a notice by the appellant No.1. The implication of the said notice is that the appellants are now seeking to resile from their earlier commitments. On such consideration, we feel that the receiver appointed by the learned Trial Judge for preservation of the interest of the parties to the suit was justified.

However, the order impugned is modified to the extent that out of the rents received by the receiver, the receiver shall defray all expenses to property tax and all other payments require to be made by the lessee under the lease agreement. We feel that the appellants may

consider giving three rooms to the plaintiffs including a toilet common to the rooms in lieu of surrender of the Kaikhali property in favour of the appellants. In the event the plaintiffs are put in possession of three rooms in the suit property including the toilet, the plaintiffs shall be obliged to surrender the flat at Bolaka Apartment, Phase-II at Kailhali Malir Bagan. The receiver shall be informed in advance in the event the parties want to implement the aforesaid arrangement so that the aforesaid arrangement are implemented in presence of the receiver, in which event, the receiver must ensure that the surrender of tenancy and restoration of possession are done simultaneously. The receiver shall prepare a report and file such report of compliance of the aforesaid relation before the learned Trial Judge. The plaintiffs shall be at liberty to apply separate electricity connection in the event such connections are not provided.

It is needless to mention that the rooms and the toilet should have electricity and water connection and to be provided to the plaintiffs at the time of restoration of possession and there shall not be any disturbance in the enjoyment of the said rooms.

The other directions of the learned trial Judge is affirmed.

In the event the three rooms including the toilet is not being provided to the plaintiffs in the suit, the

appellants shall be restrained from dispossessing the plaintiff no. 1 from the Kaikhali property.

In view of our order passed in FMAT 283 of 2021, we feel that the learned trial Judge in deciding the application for injunction shall take into consideration the order passed in this proceeding as also the order passed in the previous suit in T.S. No. 951 of 2020 in which it is claimed that an order of status-quo is subsisting.

We request the learned Trial Judge to dispose of the Injunction applications in accordance with law preferably within a period of three months from the date of communication of this order.

The views expressed by us are prima facie.

The appeals and the applications are disposed of.

There shall, however, be no order as to costs.

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

(Kausik Chanda, J.)

(Soumen Sen, J.)