

DL. March 8,
14. 2021

F.M.A.T. 356 of 2020

Ms. Shukla Mitra,
Mr. Manas Das,
...for the appellants.

Mr. Sandip Chakraborty,
...for the respondents No. 1 to 6.

It is reported by the Stamp Reporter in his report dated September 28, 2020 that the appeal is barred by 67 days.

However, in view of order dated March 23, 2020 passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 extending the period of limitation during the pandemic situation, there is no need as such to file an application for condonation of delay in preferring the appeal.

We, therefore, condone the delay of 67 days and direct registration of the appeal if it is, otherwise, in form.

This appeal will be heard. The records of this case need not be called for; notices need not be issued.

Mr. Sandip Chakraborty, learned advocate appearing for the respondents no. 1 to 6, accepts notice of this appeal.

Therefore, formal service of notice of appeal on the respondents no. 1 to 6 is dispensed with. Service of notice of appeal on the proforma respondent no. 7 is also dispensed with. Accordingly, we treat the appeal ready as regards service and, by consent of the parties, take up the appeal for hearing by treating the same as on day's list.

The plaintiffs/appellants are the co-sharers in respect of the suit properties. The appellants have relied upon a registered deed

of gift dated June 13, 1933 in support of their claim in respect of the suit property. In the suit, the plaintiffs/appellants claimed that the suit properties have been mentioned in schedule 'A' to the plaint and they have claimed only one-third interest in the suit property. The plaintiffs also relied upon the original Land Revenue Records of Right as well as the Revisional Settlement Records of Right and the certified copy of the registered deed of gift dated June 13, 1933 in support of their contention.

The plaintiffs, being able to make out a prima facie case as to their ownership to the extent of one-third share in the suit property, were granted an ad interim order of injunction in the form of status quo by the learned Civil Judge (Senior Division) at Burdwan in Title Suit No. 4 of 2020. The said order reads as follows :-

"Both the parties i.e. the plaintiffs and defendants are directed to maintain status quo as regards nature, character and possession and alienation of the suit properties as mentioned in the schedule till next date.

Issue notice upon the defendants no. 1 to 6 to show cause within 15 days of receipt of notice as to why the temporary injunction filed by the plaintiff shall not be heard against them.

Plaintiffs are to comply the provision of Order 39 Rule 3(a) and (b) CPC at once. Let the original documents be returned to the plaintiffs on proper receipt.

To date (04.02.2020) for ascertaining contest."

In view of failure to comply with the provisions of Order XXXIX Rules 3(a) and (b) of the Code of Civil Procedure, the learned trial judge, on the returnable date, vacated the ad interim order of injunction.

The learned advocate for the respondents no. 1 to 6 submits that there has been an act of omission on the part of the appellants to effect service on his clients in terms of Order XXXIX Rules 3(a) and (b) of the Code of Civil Procedure.

In view of the fact that the application for temporary injunction along with the copy of the plaint have been served on the learned advocate for the respondents no. 1 to 6 in court today, we record compliance of Order XXXIX, Rules 3(a) and (b) of the Code of Civil Procedure. We, therefore, restore the ad interim injunction in the form of status quo passed on January 7, 2020 till disposal of the application for temporary injunction.

From the order impugned in this appeal, it appears that the defendants no. 1 to 6 have already entered appearance in the suit.

We, therefore, feel that justice will be sub-served if this appeal is disposed of with a request to the learned trial judge to dispose of the application for temporary injunction as expeditiously as possible.

As such, the learned trial judge is requested to take up hearing of the application for temporary injunction a fortnight hence, when the parties are directed to appear before him. The learned trial judge shall decide the application for temporary injunction as expeditiously as possible upon giving opportunities to the defendants no. 1 to 6 to file written objection to the application for

temporary injunction.

The learned trial judge is also requested to consider as to whether the matter could be disposed of through the mechanism of mediation, since we are of the view that the scope for having an amicable settlement reached in mediation is strong.

By way of abundant caution, we make it clear that we have not gone into the merits of the claim and the counter claim of the parties involved either in the suit or in the application for temporary injunction and all points are left open to be considered by the learned trial judge on merits and in accordance with law.

The learned trial judge is requested to consider the application for temporary injunction independently and without being influenced by the ad interim order of injunction passed by him inasmuch as the scope to grant an ad interim order of injunction and the scope to grant temporary injunction are different.

With the aforesaid observations, the appeal is disposed of.

In view of disposal of the appeal, all connected applications are disposed of.

We make no order as to costs.

(Soumen Sen, J.)

dns

(Subhasis Dasgupta, J.)