

04.01.2021

Court No. 02
Item No. DL – 35
nandy

(Order Passed)

FAT 264 of 2015

with

CAN 1 of 2016

(CAN 143 of 2016)

with

CAN 2 of 2016

(CAN 11576 of 2016)

Bijay Nandi & Ors.

Vs.

Lilabati Nandi & Ors.

Ms. Deblina Lahiri, Advocate

.....for the Appellants

Mr. S.K. Halder, Advocate

.....for the Respondents

CAN 1 of 2016

(CAN 143 of 2016)

This is an application at the behest of the plaintiffs/ appellants for an injunction restraining the respondents from disturbing the possession as well as to create third party interest in respect of a joint property. The suit was filed for partition and separation of shares which was dismissed by the trial Court as the entire joint property was not included within the schedule of the plaint. In other words, the entire joint property was not the subject matter of the partition and, therefore, the suit was held to be bad for partial partition.

Be that as it may, the matter is pending before us and the judgment of the trial Court is to be tested on the anvil of law. The creation of a third party interest in a joint property may sometime invite a irreversible situation and, therefore, we feel that it is a fit case where the parties should maintain the position as it is stand now. It is also not in dispute that the plaintiffs are also in possession of the joint property so the defendants/respondents. Since they are occupying the

joint property which being the subject matter of dispute, we feel that in order to maintain the harmony and the integrity of the jointness, both the parties are restrained from disturbing the respective possession and also creating third party interest in respect of the subject properties till the disposal of the appeal.

The application being **CAN 1 of 2016** (CAN 143 of 2016) is thus **disposed of**.

Let the Lower Court Record be called for by Special Messenger at the cost of the appellant. The appellant is directed to put in the Special Messenger Cost for bringing the Lower Court Record within one week from date.

Upon deposit of such cost, Office shall bring the Lower Court Record by Special Messenger immediately. After arrival of the LCR, the department shall examine the same and if found complete, shall put a seal in this regard. The department shall ensure that the LCR arrives to this court within three weeks from the date of deposit of the Special Messenger Cost.

The appellant shall prepare eight copies of informal paper books – printed, typewritten or cyclostyled, as the case may be – out of court, within a period of eight weeks from date. All other formalities relating to preparation of Paper books are dispensed with.

It goes without saying that all the relevant documents and papers which are required for adjudication of the dispute in the appeal, shall be included in the paper book.

After the LCR is found complete, the department shall

serve a notice upon the learned Advocate for the appellants, under Rule 12 Chapter IX of the Appellate Side Rules, within a week therefrom.

Since the respondents have entered appearance, the service of notice of appeal upon them is waived.

After the completion of all the formalities, liberty is granted to the respective parties to pray for early listing of the matter.

(Kausik Chanda, J.)

(Harish Tandon, J.)