

09.03.2021.

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AS

F.A.169 of 2019
With
CAN 1 of 2021 (Old CAN 11147 of 2019)

Shri Rajesh Kumar Chowdhury
Vs.
Balkishori Devi & Ors.

Mr. Gopal Ghosh,
Mr. Debapratim Banerjee.
... for the appellant.

Despite service there is no representation on behalf of the respondents.

The suit for partition was dismissed by the trial court on the ground that the factum of acquisition of property by the father of the plaintiff in the name of the defendant no.1 has not been proved and, therefore, the reliefs claimed in the suit for partition is not maintainable.

The said judgment and decree has been carried to this Court and an application for injunction was taken out alleging that taking advantage of the dismissal of suit, the respondents are interfering with the possession of the present appellant in respect of the portion in his possession.

While passing an ad-interim order, this Court noticed that the respondent no.2 filed an eviction suit against the plaintiff for recovery of possession on the strength of the title describing the portion in

possession of the plaintiff at the suit premises. This Court passed an ad-interim order of injunction restraining the respondent no.2 from interfering with the possession of the appellant in respect of the property shown in the schedule appended to the plaint of the eviction suit for a period of six weeks from date.

In the absence of the respondents, more particularly, the respondent no.2, we are not in a position to ascertain any other facts and, therefore, we have to proceed on the basis of the statements made in the instant application by the appellant.

The fact remains that a suit for recovery of possession was filed against the plaintiff/appellant and the schedule of the plaint discloses the portion for which such recovery is sought. The aforesaid fact raises an inference that the plaintiff/appellant was held to be in possession of such portion for which the recovery of possession was sought for. No person should take the law in his own hand. If the person is found in settled possession as the suit for recovery of possession was filed, such possession cannot be disturbed except with due process of law.

We thus made the ad-interim order passed on 15th February, 2021 absolute and to continue till the disposal of the instant appeal.

The application being CAN 1 of 2019 (Old CAN 11147 of 2019) is disposed of.

The appellant is directed to communicate this order to the respondents by speed post and shall file affidavit of service on the next date of hearing when the matter shall be listed.

Let the hearing of the appeal be expedited.

Let the Lower Court Record be called for through the Special Messenger at the cost of the appellant. Such cost shall be put in within a week from date.

The appellant shall also file the requisites in effecting the service of notice of appeal upon the respondents. Such requisites shall be file within a week from date.

Immediately after arrival of the Lower Court Records, office shall examine the same and if found complete, shall issue notice of arrival of Lower Court Records on the Advocate-on-record of the appellant under Rule 12 of Chapter IX of the Appellate Side Rules.

The appellant is directed to prepare and file 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 the date of service of notice of arrival of record.

All other formalities regarding preparation of paper books are dispensed with.

After the service is effected upon the respondents and the paper book is filed by the appellant within the time hereinabove, liberty is granted to the parties to pray for early disposal of the instant appeal.

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

(Harish Tandon, J.)

(Kausik Chanda, J.)