

22.01.2021
SL No.3
Court No.12
(gc)

**FMAT 1187 of 2019
With
CAN 1 of 2019
(Old No: CAN 11990 of 2019)**

**Sri Asto Das
Vs.
Smt. Aparna Das & Ors.**

(Via Video Conference)

Mr. Nilay Sengupta,
...for the appellant.

The appeal is arising out of an order dated 7th August, 2019 in a suit for partition amongst the legal heirs of Mathur Das. The plaintiff is a son of Mathur Das and the defendants are the legal heirs of Ashok Das being the brother of the plaintiff. The plaintiff alleged that by virtue of a deed of gift executed by Mathur Das during his lifetime, the plaintiff and Ashok Das, since deceased, became the absolute owner of the property mentioned in Schedule to the Plaint. The legal heirs of Ashok Das are forcibly restraining the plaintiff from enjoying and/or occupying the portion to which the plaintiff is entitled to. The plaintiff alleged that the suit is essentially filed for demarcating the portions which need to be retained to the plaintiff and the defendants in terms of the deed of gift executed by Mathur Das. The learned Civil Judge (Senior Division), 3rd Court, Howrah although granted an order of status quo but subsequently by the impugned order vacated the said order on the ground that the deed of gift refers to different plots

of land without any demarcation and having regard to the fact that Netai Das, father of Mathur Das, died intestate leaving behind his four sons, partition in respect of the said properties between the two sons of Mathur Das cannot be permitted in absence of the other co-sharers of the properties as admittedly Mathur Das has inherited one-fourth share in the property and he can at best gift what he has inherited from his late father and that too is not absolute owner as the co-sharers are equally interested to the said plots of land to the extent of their share.

We have not been shown any document to show that the further co-sharers in respect of the property in question have relinquished their right, title or interest forming the subject matter of gift. Moreover so far as the properties in question are concerned, both the plaintiff and the defendants have equal rights. The dispute may not be inter se as if it is ultimately found that the other co-sharers of the properties have an interest in the property then their rights would be affected in the event any order is passed in this proceeding. The clear picture can only emerge, provided all the co-sharers are made parties in the suit. Unless the plaintiff is able to show that the portions covered by the gift deed have allowed to retain by the plaintiff and the defendants as legal heirs of Mathur Das by way of a family arrangement which could be oral, any order passed in this proceeding might affect the interest of the other co-sharers. This consideration, we feel at the relevant

considerations, which the learned Trial Judge has rightly addressed in vacating the interim order.

On such consideration, we do not find any reason to interfere with the order under appeal. However, we make it clear that this order shall not prevent the plaintiff to seek such remedies with better particulars and proper documents.

The appeal being FMAT 1187 of 2019 and the stay application being CAN 1 of 2019 (Old No: CAN 11990 of 2019) are, accordingly, disposed of.

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

(Aniruddha Roy, J.)

(Soumen Sen, J.)