

FMA 785 of 2021
with
CAN 1 of 2020(Old No. CAN 1010 of 2020)
(Tarun Kumar Sur & Ors. Vs. Sunil Kumar Jana & Ors.)

Mr. Asit Baran Raut
Mr. Aswini Kumar Bera

.....For the appellants

Learned Counsel appearing for the appellants assails an order of status quo passed with regard to nature, character and possession of 'ka' schedule property as well as a restraint on the transfer of the said property till disposal of the suit. The suit had been filed for partition of the suit properties including the said 'ka' schedule property.

As the suit is one of the partition, we are of the opinion that the order of status quo with regard to nature, character and possession of the scheduled property and restraint on transfer of the same is justified for preservation of the suit properties and to avoid multiplicity of proceedings. Thus, the order impugned does not call for any interference. Learned Counsel for the appellants submits that the suit is not maintainable due to non-joinder of parties. He relies on **Asish Roy vs. Rita Seal @ Nirmala Seal and Ors.** reported in **2018(1) CLJ (Cal) 189** in support of his contention.

In the said report this Court held that in the event the suit is not maintainable, an order of injunction of the said suit ought not to be passed therein.

We note that the issue of non-joinder of the parties was not agitated before the trial court at all at the time of hearing of the injunction application. Hence, we are of the opinion that the present case is distinguishable on facts from the cited case.

Moreover, such issue with regard to non-joinder is curable by addition of necessary parties and requires to be decided during the final hearing of the suit.

Thus, the appeal is dismissed.

We, however, observe that the issue of non-maintainability of the suit on the score of non-joinder of the parties may be agitated at the appropriate stage of the proceeding in accordance with law, if so advised. In the event the suit is ready for hearing, we request the trial court to proceed with hearing of the suit as expeditiously as possible and in accordance with law.

Since the appeal is dismissed, the connected application being CAN 1 of 2020 (old CAN 1010 of 2020) also stands dismissed.

All parties shall act upon the server copy of this order duly downloaded from the official website of this Court.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)