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SK
Ct. No. 12
25.01.2021

**F.M.A.T. 388 of 2020
CAN 1 of 2020
(Via Video Conference)**

**Sri Sukumar Ghosh
Vs.
Sri Mridul Kumar Ghosh & Ors.**

Mr. Asit Baran Raut,
Mr. Tuhin Subhra Raut ... For the appellant.

The appeal is arising out of an order dated 15th June 2020 passed by the learned Civil Judge, (Senior Division), 1st Additional Court, Burdwan in Title Suit No. 77 of 2020 in connection with an application for ad interim injunction in relation to the suit property. The plaintiff along with the application for injunction has also filed an application under Order XXXIX Rule 7 of the Code of Civil Procedure for appointment of an advocate commissioner to aid the Court in ascertaining the nature and character of the suit property.

The learned trial Judge while refusing to pass an ad interim order of injunction has allowed the application under Order XXXIX Rule 7 of the Code to ascertain the actual position of the suit property so as to facilitate the learned trial Judge in deciding the application for injunction. The matter was fixed on

29th June, 2020 before the trial Court to consider the report filed by the commissioner.

It is submitted on behalf of the appellant that taking advantage of the said order the defendant carrying on massive construction and in support thereof few documents have been annexed to the said petition.

We feel that since the report of the commissioner is before the trial Court the matter for injunction should be heard at the earliest and to consider that no injury is caused to the plaintiff by reason for any unauthorized act of the defendants as alleged by the plaintiff.

On such consideration we dispose of the appeal and the application with a direction upon the learned Civil Judge, (Senior Division) to decide the prayer for injunction on the basis of the commissioner's report and on any other evidence as the learned Court may deem fit and proper preferably by 31st March, 2021.

It is made clear we have not gone into the merits of the matter and the learned trial Judge shall decide the same without being influenced by any of the observations by us.

We also record that the learned trial Judge was justified in deferring the hearing of the application for injunction application till the commissioner's report was received as there could be likelihood that the

actual state of affairs could not have been properly perceived in the order of injunction passed on the day this application was moved.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Soumen Sen, J.)

(Aniruddha Roy, J.)