

05 17.03.2022

Ct-08

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FMA 254 of 2022

with

I.A No. CAN 1 of 2022

Haridhan alias Haricharan

Vs.

Haradhan Pandey & Ors.

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
... For the Appellant

Affidavit of service filed in court be kept with the record.

In spite of service the respondents are not represented today, except the respondent no. 5, upon whom the service is not effected according to postal track report. It clearly shows that the respondents are not interested to contest the appeal, except the respondent no. 5.

The record reveals that a coordinate bench on 20th January, 2022 passed the following order:-

“In a suit for partition and separation of shares an application for temporary injunction was filed and moved by the appellant for ex parte ad interim order of injunction alleging that the defendants/respondents, who are also the co-sharers, are trying to raise an unlawful construction on the suit property upon cutting the fruit bearing trees standing thereupon.

Curiously enough the Trial Court refused to pass an ex parte ad interim order of injunction solely on the ground that a proceeding under Section 144 of the Code of Criminal procedure is pending before the Sub-divisional Executive Magistrate, Tehatta, Nadia and if any order is passed, it would invite a conflict between the two proceedings.

The civil proceeding stands on different footing than that of the criminal proceeding. It is no longer res-integra that the findings/judgment of the criminal Court may not be binding on the civil Court, though the converse may some times be true. To pass an interim order under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is within the exclusive domain of the civil Court, and, therefore, we do not find that the perception as reflected in the impugned order can be supported at all.

In view of the above, the appeal is formally admitted.

Re: CAN 1 of 2022

Since the parties are the co-sharers of suit property and if any construction is made thereon upon felling down the fruit bearing trees, it will have larger impact and may cause prejudice to the other co-sharers of the undivided property.

Accordingly, the defendants/respondents are restrained from making any construction on the undivided property upon felling down the fruit bearing trees standing thereupon for a period of six weeks from date or until further order/orders of this Court, whichever is earlier.

Appellant is directed to serve copy of the instant application upon the respondents by speed post and shall file the affidavit of service on the returnable date.”

In view of the fact that the respondents are not represented and we are of the considered opinion that the order passed by the learned Civil Judge, Senior Division, Tehatta, Nadia, is demonstratively wrong, the impugned order passed by the trial court is set aside. The

interim order passed by the coordinate bench on 20th January, 2022 shall continue for a period of twelve weeks from date or till the injunction application is disposed of by the learned trial judge, whichever is earlier.

In the event the injunction application is not disposed of within the stipulated period of twelve weeks, the learned trial judge can extend the interim after giving an opportunity of hearing to the parties.

We make it clear that the learned judge, while disposing of the injunction application, should not influence with the observation made by us.

In view of the above, FMA 254 of 2022 along with CAN 1 of 2022 stands disposed of without any order as to costs.

Learned counsel appearing for the appellant is directed to communicate this order to the respondents as well as the learned advocate who represented in the trial court on behalf of the respondents.

Learned Registrar Administration(L & OM) is directed to communicate this order to the learned Civil Judge, Senior Division, Tehatta, Nadia, for information and record.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

