

FMA 154 of 2019

Dhrubananda Hazari & Anr.

Vs.

Brahmananda Hazari & Ors.

None appears for the parties. Even on the earlier occasion the parties were not represented.

The appeal is arising out of an order dated 13th March, 2018 by which the learned trial Court dismissed the application filed by the defendant nos.2 and 4 under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure.

The said application was filed on 16th February, 2018 by which time the trial has commenced.

The defendants alleged that the plaintiff started construction of a pucca house on some portion of the suit plot no.255 which is an agricultural land illegally despite having no title. On the prayer of the defendants an Advocate Commissioner was appointed to make local inspection who filed a report.

On the basis of pleadings and the report of the Commissioner it appears that the plaintiff and the defendants have separate possession in the suit properties. The defendants in the written statement have admitted that the co-sharers are in separate possession of their respective shares amicably though it has not been legally partitioned. The defendants never alleged that the plaintiff has constructed on the portion under exclusive possession of the defendants. The nature of the

construction of plaintiff as alleged was also gone into and it was ascertained that such construction is temporary in nature.

Moreover, it appears that the defendants have made construction in plot no.255 and are enjoying the said property exclusively which fact has suppressed by the defendants.

On such consideration, we do not find any reason to interfere with the order impugned. However, having regard to the fact that the suit has progressed substantially, we dispose of the appeal requesting the learned Civil Judge (Senior Division), Ghatal, Paschim Medinipur to dispose of the suit as expeditiously as possible without granting any adjournment to either of the parties unless it is unavoidable and without being influenced by order dated 13th March, 2018.

The appeal is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J)

(Soumen Sen, J.)