

27.1.2022
SL No.6 wt 7
Court No.8
(gc)

**FMA 1121 of 2019
With
CAN 1 of 2018
(Old No: CAN 5608 of 2018)**

**Md. Atiqur Rahaman & Anr.
Vs.
Hanelab Pvt. Ltd. & Ors.**

And

**FMA 1122 of 2019
With
CAN 1 of 2018
(Old No: CAN 5595 of 2018)**

**Md. Atiqur Rahaman & Anr.
Vs.
Hanelab Pvt. Ltd. & Ors.**

(Via Video Conference)

Mr. Haradhan Banerjee,
Mr. Partha Pratim Mukhopadhyay,
...for the Appellants.

Mr. Saptangsu Basu, Sr. Adv.,
Mr. Probal Kumar Mukherjee, Sr. Adv.,
Mr. Arnab Mukherjee,
...for the Respondents.

By consent of the parties, both the appeals and the applications are taken up together and disposed of by this common order.

One Bholanath Chakroborty claimed to be the owner of the suit properties in question. During his lifetime, he filed a suit being T.S. 725 of 2011 claiming the ownership by adverse possession. The said suit was decreed by the Trial Court ex parte on 31st January, 2013. On the basis

of the said decree, Bholanath Chakrobty created a lease of 99 years in favour of the present defendants except 2 decimal of land, which was sold to the wife of the defendant No.1. The plaintiffs filed a suit, *prima facie*, within the period of limitation challenging the decree dated 31st January, 2013 being T.S. No.199 of 2016 and for setting aside of the sale deeds as well as the instruments of lease. Simultaneously, an application for setting aside of the ex parte decree was filed before the Trial Court. We have been informed that the said application for setting aside of the ex parte decree is at the evidence stage and hearing is continuing. After filing the suit, the plaintiffs filed an application for injunction and an application for appointment of Receiver on the ground of taking advantage of the said ex parte decree and creation of third party interest in favour of the defendants. The said defendants are trying to forcibly evict the plaintiffs from their lawful possession and also creating disturbance in running the business of the plaintiffs. The plaintiffs have also prayed for lawful possession of the suit premises and injunction restraining the said defendants from disturbing their possession and/or creating any third party interest. Both the parties before the Trial Court armed with the respective chain of titles to establish their ownership forcefully argued their case. On the basis of the documents disclosed before the Trial Court, it cannot be said that both the parties have, *prima facie*, established

their rights over the suit properties, needless to mention, that the right, title, interest of the defendants are primarily based on the claim of Bholanath Chakroborty by adverse possession. In the event, the ex parte decree is set aside or the suit is decreed in favour of the plaintiffs, it would be axiomatic that the right, title, interest of the defendants would perish. The very claim of Bholanath Chakroborty for adverse possession of suit properties presupposes that the plaintiffs were the owners of the property but lost their right due to continuous and hostile possession of Bholanath Chakroborty over a period of 12 years claiming ownership over the land. Admittedly, this right was not adjudicated on contest. Moreover, the plaintiffs in the suit have given particulars of fraud alleged to have been committed by Bholanath Chakroborty in obtaining the said ex parte decree. On the contrary, the defendants for valuable consideration had obtained lease from Bholanath Chakroborty and are found to be in possession. The plaintiffs claim that valuable equipments and items concerning their business are in the suit premises, which, however, being disputed by the defendants as they claim ownership over the suit properties.

The purpose of injunction and appointment of Receiver are essentially for the purpose of preservation of the suit properties till the rights are finally adjudicated. It cannot be said at this stage that the plaintiffs have not been able to establish their *prima facie* case for an

injunction as in the event the decree is set aside and the plaintiffs succeed in the suit, the right, title, interest of the defendants are likely to perish and the Court cannot allow an irreversible issue to take place in the event the decree is passed in favour of the plaintiffs. At the same time, the defendants' interest also needs to be protected as they are found to be in possession. It was on such consideration, we are of the view that the order of injunction restraining the defendant Nos.1 and 2 from creating, alienating, transferring and/or encumbering of the suit properties in any manner whatsoever is required to be continued till the disposal of the suit. Insofar as the appointment of Receiver is concerned, Order 40 Rule 1 of the Code of Civil Procedure refers to the guidelines that the Court should keep in mind while considering the prayer for appointment of Receiver. There are rival claims with regard to the moveable items in Schedule "F" to the Plaint. Admittedly, the plaintiffs run a business and it cannot be said at this stage that the articles lying there do not belong to the plaintiffs or are not being used by the plaintiffs for their business. In view of the objections raised by the defendants with regard to the ownership of such articles, the defendants have not disclosed any documents, *prima facie*, to show that they carry on such business for a length of time similar to that of the plaintiffs. But, however, at the same time, these moveable properties are subject matter of the suit which requires preservation.

In view thereof, we feel it just and convenient to continue with the appointment of Receiver for the purpose of making inventory and taking due care of the moveable articles lying in the suit premises without disturbing the possession of the defendants in the suit premises.

Mr. Banerjee, learned Counsel for the appellants submits that the joint Receivers have been appointed over the entirety of the suit properties. However, in our reading of the order of the Trial Court, it does not appear to be so as contended by Mr. Banerjee. It only directs the Joint Receiver to take note of the possession of the suit properties and other details thereof and to prepare an inventory with other details of the moveable articles lying therein. It is needless to mention that if any of the moveable articles in the suit properties are presently lying, the Joint Receiver make note of such properties as well as should take note of the suit properties as it is required to preserve the right of both the parties.

All other directions of the Trial Court shall remain unaltered. We request the learned Trial Judge to dispose of the application for setting aside of the ex parte decree as expeditiously as possible.

In the event the application for setting aside of the ex parte decree is allowed by the Trial Court, the parties may pray for hearing of both the suits analogously.

We have been informed that the present suit is otherwise ready for hearing, the parties may request the

learned Trial Judge to dispose of the said suit as expeditiously as possible soon after the application for setting aside of the ex parte decree is decided by the Trial Court.

This order shall be brought to the notice of the learned Trial Judge for hearing the application under Order 9 Rule 13 of the Code of Civil Procedure.

It is needless to mention that the observations made herein are only for the purpose of deciding the appeals and shall not influence the learned Trial Judge in deciding the suit in accordance with law.

With the aforesaid observation, the appeals, being FMA 1121 of 2019 and FMA 1122 of 2019 and the connected applications, being CAN 5608 of 2018 and CAN 5595 of 2018 are disposed of.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)