

17.02.2022
SL No.3
Court No.8
(gc)

**FMAT 22 of 2022
With
CAN 1 of 2022**

**Joy Bhattacharjee
Vs.
Smt. Krishna Bhattacharjee & Anr.**

(Via Video Conference)

Mr. Prantick Ghosh,
...for the Appellant.
Mr. Siddhartha Sarkar,
...for the Respondents.

By consent of the parties, the appeal and the application are taken up together for consideration and disposed of by this common order.

Pursuant to the notice served upon Mr. Siddhartha Sarkar, learned Counsel appearing on behalf of the respondents, we have heard the learned Counsel for the parties.

In a partition suit, the plaintiff/appellant filed an application prayed for ad-interim order of injunction claiming that he is one of the co-sharers. The learned Trial Judge, although noticed that the prayer in the plaint is for declaration of shares and it is a partition suit, refused to pass any ad-interim order on the ground that no urgency was shown for an order of injunction. In a partition suit, if the plaintiff establishes his right over the suit property as a co-sharer, as a matter of course injunction should follow, as the parties are not expected to deal with the suit property to

create any third party interest during the pendency of the suit. This basic principle appears to have been overlooked by the learned Trial Judge, although the learned Trial Judge observed that it is a suit for partition.

On 3rd February, 2022, we passed an interim order. We have been informed that the injunction application is fixed for hearing on 30th March, 2022.

After hearing the learned Counsel for the respondents, we do not find any reason to modify the ad-interim order of injunction as we are of the view that when the application was moved, there were sufficient materials to pass an order of injunction and we are exercising the same power. However, since notice has been given to the respondents, we have heard the respondents and it is not being denied that the plaintiff is one of the co-sharers.

Under such circumstances, we dispose of the injunction application by restraining the parties from alienating and/or encumbering the suit properties and to maintain status quo with regard to the possession till disposal of the suit.

In view of the agreement between the parties that this matter can dispose of the injunction application pending before the Trial Court, we direct the parties to produce this order before the Trial Court for record.

The parties have also agreed that having regard to the nature of the disputes, the parties are willing to settle their disputes through mediation. Accordingly, the parties are

directed to approach the Trial Court for referring their disputes through mediation. On a request being made, the Trial Court shall refer the matter to mediation. It is needless to mention that the learned Advocates representing the parties and the parties shall cooperate during mediation in order to enable the learned Mediator to bring out a settlement between the parties.

Accordingly, the appeal being FMAT 22 of 2022 and the application being CAN 1 of 2022 stand disposed of.

However, there shall be no order as to costs.

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.)