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30-03-2022

FMA 123 of 2022
CAN 1 of 2022

Ct. 8

Sukdeb Karmakar alias Subodh Karmakar & Ors.
Versus
Uttam Karmakar & Ors.

Mr. Chittapriya Ghosh, Adv.
Mr. Samir Kumar Adhikari, Adv.
Ms. Priyanka Saha, Adv.

...for the appellants

In a partition suit, the respondents/appellants filed a caveat on 9th August, 2021. However, on 8th October, 2021 the injunction petition was heard ex parte with a recording being made that no caveat is pending. The learned Trial Judge seems to have overlooked the earlier order of 9th August, 2021.

Once the caveat has been lodged at the time of a petition was filed for injunction, it was a duty of the Trial Court to hear the caveator before passing any ad interim order of injunction. However, the Court can retain the jurisdiction to hear the said application afresh by recalling the order after giving an opportunity of hearing to the aggrieved parties.

In the instant case, the respondents are the aggrieved parties. The respondents do not dispute that it is suit for partition. The learned Trial Judge has taken into consideration the record of rights in favour of Nibaran Karmakar, Babul Karmakar and the other sons of Nibaran Karmakar in respect of plot no. 127, JL No. 23. The record of rights as it stands are of in the name of the plaintiffs. The plaintiffs have also disclosed one original death

certificate of Habul Karmakar and a gift deed in respect of plot no. 127, JL no. 21 executed by the plaintiff no.4 in favour of the other plaintiffs. Undoubtedly, this material establishes a prima facie proof of the property being originally owned by Nibaran Karmakar and his sons, including Habul Karmakar. The plaintiffs are the sons of Habul Karmakar. The plaintiffs prima facie established the joint interest over the suit property along with other co-sharers.

It is on such consideration, we feel the order of status quo granting in favour of the plaintiffs on 8th October, 2021 should continue till the disposal of the injunction application.

On such consideration, although we are in agreement that the learned Counsel appearing on behalf of the appellants that the order dated 8th October, 2021 ought not to have been passed without hearing the caveator but for a fresh consideration of the materials on record, we are of the view that the exercise of the discretion of the learned Trial Judge on 8th October, 2021 on the basis of the available records, does not suffer from any perversity. However, the observations are prima facie and these observations shall not influence the learned Trial Court in disposing of the injunction application on merits.

The appeal and the application are disposed of.

In the event the pleadings are complete, we request the learned Trial Judge to dispose of the injunction application as expeditiously as possible.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)