

22. 21.06.2022
Ct. No.08
Tanmoy

F.M.A. 2660 of 2015

Dinesh Kr. Goyal
-Versus-
Smt. Manju Agarwal & Anr.

With
IA No: C.A.N. 1 of 2014 (Old No: C.A.N. 3166 of 2014)

None appears on behalf of the parties even in the second call.

The appeal is arising out of an order passed in connection with an application for temporary injunction under Order XXXIX, Rule 1 and 2, read with Section 151 of the Code of Civil Procedure along with the application under Order XXXIX, Rule 4 of the Civil Procedure Code in a suit for declaration, injunction and other consequential reliefs.

By the order impugned, the earlier *interim* order was modified to the extent that the defendant no.2 was restrained from transferring, alienating and/or creating any third-party interest till the disposal of the suit. However, by the original order it appears that in the original *ad interim* order the defendants were restrained from transferring, alienating the property to any third party and the defendant no.2 was further restrained from interfering with the peaceful enjoyment and occupation of the plaintiff in respect of the suit property. The learned trial Court, on the basis of the

pleadings and documents, found that the property is a tenanted property and the possession of the property was lying with the tenants who are residing in the property and it is a question of symbolic or constructive possession that the plaintiff or the defendant no.2 can boast of. The mutation of the property was in the name of the defendant no.2 in the records of the Corporation and payment of Corporation tax by the defendant no.2 *prima facie* establish that the said defendant no.2 is in possession of the property.

On such conspectus of facts, we are of the opinion that the trial Court was justified in modifying the original order passed on June 11, 2013.

We find from record that even on the earlier occasion, none of the parties have appeared before a co-ordinate Bench and a direction was passed by the co-ordinate Bench for listing of the appeal along with the connected application on July 5, 2021 with the warning, 'Last Chance'.

Even today, the parties are not represented. For the reasons recorded above, we do not find any reason to interfere with the order under challenge. Moreover, from the status report and the order made available to us by the department, it appears that the suit was decreed on compromise as it relates to the number of parties to the suit on the basis of petition dated October 8, 2021. In view of such compromise decree,

the order impugned has become inconsequential and irrelevant. We dispose of the appeal by recording that the suit was decreed on October 8, 2021 on the basis of the Misc. Case being numbered 7574 of 2014 (J.O. Code-WB-00919). The status report is kept with the records.

The appeal being F.M.A. 2660 of 2015 and the connected application being IA No: C.A.N. 1 of 2014 (Old No: C.A.N. 3166 of 2014) are disposed of.

However, there shall be no order as to costs.

Let urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)