

DL. September
20. 6, 2022

F.M.A. 1406 of 2015

Ananda Sampui & ors.
Vs.
Sambhu Nath Ghosh & ors.

The appellants are not represented, nor any accommodation is prayed on their behalf. By a previous order dated June 28, 2021 noticing that the parties were not represented, a co-ordinate bench of this court directed the appeal and the application to be listed with the warning “last chance”. However, we propose to decide the question of admission of the appeal on the basis of the materials available on record.

The present appeal has arisen out of an order dated January 30, 2014 passed by the learned Civil Judge (Senior Division) at Searampore, Hooghly, in Title Suit No. 261 of 2013 in connection with an application filed by the plaintiffs/appellants under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure.

The suit is for partition and injunction. The learned trial judge modified his earlier order dated March 5, 2012 after considering the objections filed by the defendants/respondents. The learned trial judge, on consideration of material on record, has arrived at a finding that there is a dispute in respect of R. S. Dag No. 1070, which falls part of the entire suit property, there is nothing on record to show that there is any dispute regarding other

properties as mentioned in the suit schedule. The learned trial judge also took a note of the final decree passed in Title Suit No. 31 of 2000 which was passed on the basis of a compromise arrived at by and between the parties. R. S. Dag No. 1070 also forms part of the decree in the said suit.

The learned trial judge upon consideration of the fact that the dispute is confined to property under R. S. Dag No. 1070 directed the parties to maintain status quo in respect of the said property till disposal of the suit.

The discretion exercised by the learned trial judge does not appear to be manifestly perverse. On such consideration, we do not find any reason to interfere with the order passed by the trial court.

The appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

However, the learned trial judge is directed to dispose of the suit being Title Suit No. 261 of 2013, if the same remains still pending, as expeditiously as possible, preferably within a period of one year from the date of communication of this order without granting any unnecessary adjournment to either of the parties.

In view of dismissal of the appeal, nothing remains to be decided in the application for injunction filed under CAN 6306

of 2014 and the same is also dismissed.

There will be no order as to costs.

The learned Registrar Administration (L & OM) of this court is requested to see that this order shall be communicated to the trial court within a period of two weeks from date.

(Soumen Sen, J.)

dns

(Uday Kumar, J.)