

DL. September
21. 6, 2022

F.M.A. 1771 of 2015

**Martuja & Ors.
Vs.
Smt. Sushama Rani Burman & Ors.**

The appellant is not represented, nor any accommodation is prayed on their behalf. On the earlier occasion also the matter was adjourned on the prayer of Mr. Amitava Ghosh, learned advocate appearing on behalf of the appellants. 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 July 11, 2014 passed by the learned Civil Judge (Senior Division) at Malda, in Title Suit No. 167 of 2014 in connection with an application filed by the plaintiff/appellants under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

The suit has been filed praying for declaration of title and permanent injunction. The learned trial judge refused to pass any ex parte ad interim order of injunction on the ground that the plaintiffs intended to challenge the legality and validity of a deed executed in the year 1955. The learned trial judge felt that the prayer made by the plaintiffs should be considered in presence of the defendants.

In our view, the discretion is being properly exercised by the learned trial judge, we do not find any reason to interfere with the order passed by the trial court refusing to pass any ex parte ad interim order of injunction.

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

However, we direct the learned trial judge to dispose of the application for temporary injunction, if the same remains still pending, within a period of six months from the date of communication of this order without granting any unnecessary adjournment to either of the parties. The learned trial judge is also requested to dispose of the suits being Title Suit No.167 of 2014 as expeditiously as possible without granting any unnecessary adjournment to either of the parties and, if required, by passing peremptory direction with regard to procedural matters to make the suit ready for hearing..

In view of dismissal of the appeal, nothings remains to be decided in the application for in junction filed under CAN 8018 OF 2014 and the same is also dismissed.

There will be no order as to costs.

dns

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.)

(Uday Kumar, J.)

