

Item 37. 05-07-2022 FMA 534 of 2015
CAN 1 of 2014 (old CAN 11101 of 2014)

sg Ct. 8 Asok Rahut & Ors.
Versus
Kalyan Kumar Rahut & Ors.

(Through Video Conference)

This matter appeared in the warning list on 29th June, 2022 and continued to appear in the list until it was transferred to the daily cause list today.

The appeal is arising out of an order passed in connected with an application filed under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure. The plaintiffs have filed the suit for partition along with the petition for temporary injunction on the ground that the plaintiff and the defendants are the co-sharers and the defendants are trying to oust the plaintiffs from the suit property. The ad interim order of injunction was passed on 19th August, 2014.

The learned Judge was satisfied that the plaintiff has a prima facie case as in a joint property one of the co-sharers of the suit property can not oust the other co-sharer as all the co-sharers' possession is lawful possession. The prima facie view on the basis of which the ad interim order of injunction was passed cannot be said to be arbitrary or that the discretion was exercised arbitrarily. Moreover, we find that the ad interim order was for a limited period i.e. on 5th September, 2014.

On such consideration, we do not find any reason to

interfere with the order passed by the learned Judge.

The appeal and the application are dismissed. However, there shall be no order as to costs.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)