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Ct-08

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FMA 147 of 2022
with
I.A No. CAN 1 of 2022

Rahuma Bewa & Ors.
Vs.
Fateruddin Sk. & Ors.

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
... For the Appellants

The ad interim injunction was refused in the partition suit on 12th January, 2021.

Learned counsel appearing for the appellants has informed that said injunction petition is still pending.

It is submitted that the parties by mutual arrangement are in possession of agreed portion of the suit premises. However, the appellants alleged that the respondents have encroached upon areas not yet partitioned and are raising construction on the best portion of the suit property. The appellants however admit that the shares of the parties are not in dispute.

Learned counsel for the appellants further submits that the defendants have not yet filed written statement. Be that as it may, we feel that the injunction application is required to be disposed of, keeping in mind that the plaintiffs and the defendants are co-sharers.

In view of the fact that the matter is pending before the trial court for more than one year and the plaintiffs are unable to inform whether any construction in fact has been made by the defendants, we dispose of the appeal by observing that any construction, as alleged to have been made by the defendants on the portion of the suit property beyond the mutually

agreed portion and the respective share of the parties shall not create any equity in their favour.

Learned judge is requested to dispose of the suit as early as possible following the aforesaid observation.

Since the respondents are not issued notice, we make it clear that the aforesaid direction is based on the submission made by the appellants/plaintiffs and the documents made available to this Court at the admission stage in support of their contention that the defendants were not making construction within the mutually agreed portion of the suit property and has encroached upon areas not allotted to either of the parties as the said portion has not yet been partitioned. This order shall not prevent the respondents to deny the claim made by the appellants in this appeal before the learned trial court.

In view of the above, FMA 147 of 2022 is disposed of.

In view of disposal of the appeal, nothing remains to be decided in the connected application being CAN 1 of 2022 and the same is accordingly disposed of.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

