

21.06.2022
SL No.17
Court No.8
(gc)

**FMA 1083 of 2015
With
CAN 1 of 2014
(Old No: CAN 11756 of 2014)**

**Sri Krishna Sankar Adhikary & Anr.
Vs.
Sri Satya Sankar Adhikary & Ors.**

None appears for the parties even in the second call.

The appeal is arising out of an order passed by the learned Trial Court on 11th September, 2014 in T.S.No.83 of 2014 filed by the plaintiffs/appellants challenging the preliminary and final decree of T.S. No.07 of 2004 as bad, illegal, inoperative and not binding upon the plaintiffs on the plea of fraud upon the Court and for recovery of possession of the B Schedule property along with other relief. The learned Trial Judge refused to pass any ad-interim order on the ground that the defendant No.1, at the relevant time, was in possession of the B Schedule property and unless the said defendant is heard, irreparable loss may be caused to the said defendant in the event any ad-interim order is passed in favour of the plaintiffs. The power to grant ad-interim relief is discretionary. Unless it appears to the Appellate Court that such discretion was exercised on a wrong premise and is demonstrably perverse, no interference should be made with regard to such ad-interim order.

Furthermore, it appears that the appellant did not appear even on the earlier occasion, that is, on 1st July, 2021 for which the Coordinate Bench directed the matter to be listed under the heading “For Dismissal” on 5th July, 2021.

For the aforesaid reasons, the appeal being FMA 1083 of 2015 and the application being CAN 1 of 2014 (Old No: CAN 11756 of 2014) stand dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)