

13 06.05.2022

Ct-08

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FAT 38 of 2021
with
I.A No. CAN 2573 of 2020

Smt. Jaysree Dutta & Anr.
Vs.
Smt. Chandra Dutta & Anr.

Mr. Sanjib Bandyopadhyay
Mr. Ashok Kumar Singh
... For the Appellants

Mr. Sukanta Chakraborty
Mr. Anindya Halder
... For the Respondents

By consent of the parties the appeal is treated as on day's list and is taken up for hearing along with the application.

The plaintiffs and the defendant no. 1 are the legal heirs of late Sudhangshu Sekhar Dutta.

The plaintiffs have filed the suit for partition. The suit was decreed partly.

The defendants filed the written statement in September 2016, but did not take steps to contest the suit. The learned Trial Judge, therefore, has no other alternative but to proceed with the suit ex parte. The learned Trial Judge was of the view that all the Term Deposits, Fixed Deposits, Bank Deposits and MIS standing in the name of late Sudhangsu Sekhar Dutta along with the right over the business in the name and style of Joyosree Enterprise and Dutta Trading Company shall be divided according to the share declared in the order dated 11th November, 2019.

The appellants did not file any application for recalling of the said decree.

In the appeal it is contended that Joyosree Enterprise and Dutta Trading Company are the sole businesses of the defendant no. 1 and

defendant no. 2. They are the exclusive owners of the said businesses and in this regard reliance is placed in paragraph 9 of the written statement.

Learned Counsel appearing for the plaintiffs-decree-holder has submitted that no document in support of such claim has ever been filed before the Trial Court and this appeal should be dismissed at the threshold and the appellants have deliberately avoided to contest the said suit.

We feel that the respondents are justified in raising such objection. The fact remains that the defendants had filed their written statement in which they specifically taken plea that said two businesses are exclusively and sole businesses of the defendant no. 1 and defendant no. 2 respectively. We, however, feel that interest of justice would sub-serve if an opportunity is given to the defendants to adduce evidence in support of their claim on terms.

We accordingly direct the defendants that upon payment of cost of Rs.30,000/- to be paid to the plaintiffs-decree-holder within two weeks from date the defendants shall be entitled to file affidavit of documents and affidavit of evidence within two weeks thereafter.

In the event such cost is not paid within time, the decree shall stand automatically revived and become executable.

On the basis of the affidavit of evidence, the plaintiffs may be given an opportunity to adduce further evidence.

The defendants shall be at liberty to cross-examine the plaintiffs and their witnesses, if so advised, to lead evidence.

We request the learned Trial Judge to make a time frame for the trial and dispose of the suit as

expeditiously as possible without granting any adjournment to either of the parties, unless it is unavoidable.

The Trial Court shall decide whether the defendant no. 1 and defendant no. 2 are the owners of Joyosree Enterprise and Dutta Trading Company as alleged in paragraph 9 of the written statement and also in respect of the Term Deposits, Fixed Deposits, Bank Deposits and MIS standing in the name of late Sudhangsu Sekhar Dutta.

There shall be an order of injunction restraining the defendant no. 1 and defendant no. 2 from alienating and encumbering the suit businesses and also not to encash the Term Deposits, Fixed Deposits, Bank Deposits and MIS standing in the name of late Sudhangsu Sekhar Dutta without prejudice to the rights and contentions

The Pleader Commissioner shall conclude the proceeding and the report of the Pleader's Commiserion shall be considered only after the Trial Court arrive at a finding with regard to the nature and character of the said two businesses and the other deposits, as we have referred earlier.

We make it clear that the appellants shall render all cooperation with the Commissioner and should not cause any obstruction to the Commissioner in discharging her function.

The other part of the decree is upheld.

The appeal being FAT 38 of 2021 is allowed in part.

CAN 2573 of 2020 is accordingly disposed of.

(Sugato Majumdar,J.)

(Soumen Sen, J.)

