

Item 11. 20-05-2022

FMA 546 of 2022
CAN 1 of 2022
CAN 2 of 2022

sg Ct. 8

Prabir Roy
Versus
Goutam Roy & Ors.

Mr. Pratip Mukherjee, Adv.
Mr. Rahul Agarwal, Adv.
Mr. Omar Faruk Gazi, Adv.
Mr. Arpit Agarwal, Adv.

...for the appellant

Affidavit of service filed in Court today is taken on record.

In Re: CAN 1 of 2022

The report of the Stamp Reporter is accepted.

In view of the order of the Hon'ble Supreme Court dated 10th January, 2022 passed in SMW(C) no. 3 of 2020, the appeal is within time and accordingly, the application for condonation of delay being CAN 1 of 2022 is disposed of.

In Re: CAN 1 of 2022 and FMA 546 of 2022

In view of the clear finding made by the learned Trial Judge at the interlocutory stage that a specific demarcated portion was sold to Goutam Roy and at the adjacent north of his purchased land there remain 4 ft. wide common passage, the allegation that Goutam Roy had encroached upon any portion of the suit property or had caused any inconvenience to the plaintiff's ingress and egress cannot be accepted. However, the views are prima facie.

We find that there is a sanctioned plan, which has remained unchallenged and no application was filed by the plaintiff for

appointment of an Advocate Commissioner to find out whether there has been any encroachment.

The learned Counsel for the appellant, at this stage, submits that it is a suit for partition and Mr. Goutam Roy could not claim any demarcated portion of land to be in their possession.

It is a question of fact that needs to be decided at the trial. However, any construction made by the defendants shall not create any equity in their favour.

The learned Trial Court is requested to expedite the hearing of the suit. Peremptory directions with regard to the procedural matters may be passed in making the suit ready for hearing.

Mr. Pratip Mukherjee, learned Counsel representing the appellant submits that the appellant is willing to file an application for appointment of an Advocate Commissioner.

In the event any such application is filed, the learned Trial Judge shall decide the said application on merits and dispose of the same in accordance with law.

If any construction is made during pendency, the same shall not create any equity in favour of either of the parties.

The appeal being FMA 546 of 2022 and the application being CAN 2 of 2022 are, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)