

26.04.2022

Court No.32
rpan/12

MAT 235 of 2018

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IA No.: CAN 1 of 2018 [Old No.: CAN 1722 of 2018]

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CAN 2 of 2018 [Old No.: CAN 1723 of 2018]

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CAN 3 of 2018 [Old No.: CAN 1726 of 2018]

Sankar Ranjit & Others

- Versus -

Bhupati Charan Maity & Another

Mr. Anup Dasgupta,

Mr. Raj Kumar Sain,

Ms. Sarmistha Pal,

Mr. S. Bhattacharjee

... for the Applicants/Appellants.

As we have invited Mr. Dasgupta, learned advocate appearing for the applicants in the application for leave to appeal, being CAN 1 of 2018 [Old No.: CAN 1722 of 2018] to argue on merits, the delay in preferring the said application for leave to appeal is condoned and the application for condonation of delay, being CAN 3 of 2018 [Old No.: CAN 1726 of 2018] is allowed.

The application for leave to appeal and the application for stay of operation of the order dated 22nd November, 2017 passed in the writ petition being W.P. No. 27856 (W) of 2017, being CAN 2 of 2018 [Old No.: CAN 1723 of 2018] are taken up for hearing.

Mr. Dasgupta submits that three brothers, namely, Bibhuti Maity, Sripati Charan Maity and Bhupati Charan Maity were the initial owners of the

disputed plots of land in question, being Nos.1782, 1723, 1744, 1745 and 3261, Mouza – Dakshin Shibpur, Police Station – Fezerganj, South 24-Parganas. After the demise of Bibhuti Maity in the year 1985, his 1/3 share over the concerned plots of land devolved upon his daughter, namely, Basumati Maity, who expired on 9th January, 2002 and the applicants herein, who are grandsons and grand daughters of Bibhuti Maity. Suppressing such fact the writ petitioners, namely Bhupati Charan Maity and one Malati Maity preferred the writ petition alleging *inter alia* that despite an order of injunction passed by the learned Civil Court on 6th October, 2015, the private respondents in the writ petition were preventing them from harvesting the crops on the plots of land.

Mr. Dasgupta further submits that applicants were not impleaded in the writ petition. The order dated 22nd November, 2017 was thus obtained behind the back of the applicants and as such, they have been seriously prejudiced and they may be granted leave to prefer appeal against the order dated 22nd November, 2017.

No one appears on behalf of the respondents.

In the order dated 22nd November, 2017 passed in W.P. no.27856 (W) of 2017, the learned Single Judge observed that the writ petitioners are the plaintiffs in

Title Suit Nos.293 and 294 of 2015 pending before learned Civil Judge, Junior Division, Kakdwip, South 24-Parganas and that there subsists an order no.4 dated 6th October, 2015 directing the parties to maintain *status quo* in respect of the possession, nature and character of the suit property. It was further directed that the police authorities shall ensure that the parties abide by such interim order as extended from time to time and that there is no hindrance to the harvesting of crops at the plots concerned.

Answering our query, Mr. Dasgupta submits that the applicants herein are not parties in the said title suits. However, they have filed applications for addition of party and the said applications have not yet been disposed of.

From the averments made in the application for leave to appeal it does not appear that the applicants herein are in possession of the concerned plots of land. The issue as regards possession involves disputed question of fact which needs to be adjudicated by the learned Civil Court in the title suits.

The learned Single Judge had only passed a direction to the effect that the police authorities shall ensure that the parties abide by the order no.4 dated 6th October, 2015 passed in the said title suits. The applicants are not yet parties in the said title suits. We

thus do not find that any prejudice has been caused to the applicants herein by the said order dated 22nd November, 2017.

In view thereof, we are of the opinion that no interference is called for and the application for leave to appeal being CAN 1 of 2018 [Old No.: CAN 1722 of 2018] and the application for stay being CAN 2 of 2018 [Old No.: CAN 1723 of 2018] are dismissed.

Needless to observe, the dismissal of the present applications will not prevent the applicants from taking appropriate steps for vacating, modifying or varying the subsisting order no. 4 dated 6th October, 2015 in the title suits after their applications for addition party are allowed.

(Sugato Majumdar, J.) (Tapabrata Chakraborty, J.)