

DL. April 20,
20. 2022

F.M.A. 350 of 2021

Banibrata Poddar
Vs.
Subrata Poddar & ors.

Mr. Shehnaz Tareq Mina,
Mr. Samir Kumar Chakraborti,
...for the appellant.

This appeal has arisen out of an order passed by the learned Civil Judge (Senior Division), Fifth Court at Alipore, South 24-Parganas, in connection with an application for injunction filed in a partition suit.

The learned trial judge refused to pass the ad interim order of injunction on the ground that apparently all the co-sharers are in possession of their respective portion in the suit property and that in order to decide the application for injunction, the presence of the defendants/respondents may be necessary.

From the order sheets, it appears that the trial court have dismissed the petition for interim injunction, which we feel, however, was not proper having regard to the fact that the plaintiff has made certain allegations, which if proved would entitle the plaintiff to an order and the appellant is required to be decided in presence of the defendants. In our view, when the trial court arrived at a finding that all the co-sharers are in possession of their respective portion in the suit property, then the trial court could have directed the parties to maintain status quo as regards possession and nature and character of the suit property.

It appears from the report of the learned Civil Judge (Senior Division), Fifth Court at Alipore, that the trial court has

fixed July 27, 2022 for service return and appearance of the defendants. We have also noticed that the plaintiff did not take any step on December 9, 2021 and March 22, 2022 for service return and appearance by the defendants. We are of the view that due to failure on the part of the plaintiff/appellant to comply with the direction passed on January 29, 2021, the injunction application could not be considered as disposed of on February 15, 2021.

Under such circumstances, we direct the learned trial judge to reconsider the prayer for injunction as expeditiously as possible and dispose of the injunction application on merits after giving opportunities to the defendants to file their written objections. The possession of the appellant should not be disturbed. The impugned order is set aside.

With the aforesaid observations, the appeal stands disposed of at the admission stage. The application for injunction filed under CAN 1 of 2021 also stands disposed of.

There will be no order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Soumen Sen, J.)

dns

(Ajoy Kumar Mukherjee, J.)

