

04.04.2022
SL No.5
Court No.8
(gc)

**FMAT 78 of 2022
With
CAN 1 of 2022**

**Prabhu Vinayak Enterprises
Vs.
Roseview Developers Private Ltd. & Ors.**

Mr. Kishore Datta, Sr. Adv.,
Mr. Aniruddha Chatterjee,
Mrs. Suchismita Ghosh Chatterjee,
Mrs. Surabhi Banerjee,
Mr. Ishaan Saha,
...for the Appellant.
Mr. Raja Basu Roy Chowdhury,
Mr. F. Gaffar,
Mrs. S. Chakraborty,
...for the Respondent
No.1/Defendant No.1.

Pursuant to our direction, the Lower Court Record is produced wherefrom it appears that the appellant has relied upon two deeds, namely, the deeds dated 5th June, 1942 and 30th April, 1945 to establish their chain of title. However, these two documents were not considered by the Trial Court while rejecting the application for injunction under Order 39 Rule 1 & 2 of the Code of Civil Procedure.

We feel that the said documents are relevant and are required to be considered while deciding the application filed by the appellant for an order of injunction. We have been informed that prior to the rejection of the said application, a Coordinate Bench on an earlier occasion on 22nd September, 2021 directed the parties to maintain status quo as on that date regarding ownership and possession of the property in question.

Mr. Raja Basu Roy Chowdhury, learned Counsel appearing on behalf of the respondent No.1 submits that the in the Record of Rights the name of the predecessor of the respondent No.1 is recorded and it, *prima facie*, shows that the respondent No.1 is in possession of the said property through a derivative title. However, we must state that the ROR does not create title but it is certainly *prima facie* proof of possession. The order passed by the Coordinate Bench on 22nd September, 2021 insofar as it directs status quo with regard to the possession adequately protects the interest of the respondent No.1 for the time being.

Mr. Kishore Datta, learned Senior Counsel appearing on behalf of the appellant submits that there are two other documents, namely, title deeds dated 23rd April, 1952 and 3rd February, 2010 that are required to be taken into consideration to complete the chain of titles in favour of the appellant.

In view of the submission made on behalf of the respondent No.1/defendant No.1 that no opportunity was given to controvert those documents filed belatedly along with a copy of reply, we permit the respondent No.1 to file a rejoinder to the affidavit-in-reply filed in connection with supplementary affidavit by the respondent No.1 before the Trial Court where according to the submission of Mr. Raja Basu Roy Chowdhury, Advocate, these documents were disclosed. The respondent No.1 shall file re-joinder within two weeks from date.

Mr. Basu Roy Chowdhury further submits that under of the West Bengal Estate Acquisition Act, the predecessor of the respondent No.1 was allowed to retain the land which has subsequently been transferred in favour of the respondent No.1.

On such consideration, we restore the order passed by the Coordinate Bench on 22nd September, 2021 with the aforesaid observation and with a request to the learned Trial Judge to rehear the said injunction application on merits and rewrite the judgment after taking into consideration all the documents concerning title as claimed by the parties.

It is made clear that all points are left open to the learned Trial Judge to decide the injunction application and the learned Trial Judge shall not be influenced by any observation made by us in this order.

The appeal being FMAT 78 of 2022 and the application being CAN 1 of 2022, accordingly, stand disposed of.

However, there shall be no order as to costs.

The L.C.R. produced in terms of our earlier order immediately be sent down to the learned Trial Court by the department.

The learned Registrar Administration (L&OM) shall ensure the transfer of the L.C.R. to the Trial Court.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)