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Ct-08

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FMA 353 of 2022
with
I.A No. CAN 1 of 2022
with
COT 21 of 2022
with
COT 26 of 2022

Anil Chandra Ghosh
Vs.
Tushar Kanti Das & Ors.

Mr. Pinaki Dhole
Mr. Ziaur Rahman
Mr. Debjit Bhattacharyya
.... For the Appellant/Plaintiff

Mr. Aniruddha Chatterjee
Mr. Arkadipto Sengupta
Ms. Deboleena Ghosh
.... For the Respondent no. 1

Mr. Tanmoy Mukherjee
Mr. Sagnik Chatterjee
Mr. Subhajit Das
.... For the Respondent no. 4 &
filed COT 26 of 2022

The appeal has come up for admission along with two cross appeals. Both are arising out of similar impugned order. The plaintiff and the defendant nos. 1,2 and 3 are in possession of the land. The title deed shown that the demarcated portion of the suit property was purchased by the plaintiff and the defendant nos. 1,2 and 3 and separate municipal holding numbers have been allotted to the parties, on the basis of the documents produced before the municipal authority.

Although in a suit for partition every co-sharer has interest in every inch of the land so long the partition proceeding is not concluded and a final decree is passed, there cannot be an absolute proposition that a party to partition

should be found to be in exclusive possession of a portion of the land either by reason of continuous possession or by any other arrangement cannot enjoy the said portion by raising a construction for his own use and occupation without creating any equity in his favour and subject to the result of the partition suit.

The trial court had taken into consideration the aforesaid facts modifying its earlier order of statusquo dated 22nd November, 2021 to the extent that the defendant no. 1 may develop the property in his possession only on furnishing security bond of Rs.5,00,000/- (five lakhs).

Mr. Pinaki Dhole, learned counsel appearing for the appellant, has submitted that there is an encroachment about 3 feet wide common passage and the construction on the said passage by the respondents would be in violation of the area presented under the occupation of the parties. However, we do not find any material at this stage to arrive at a finding that there has been encroachment of 3 feet wide common passage. It is also noted that the appellant has not filed any application for inspection/investigation as yet before the trial court, complaining about such encroachment.

Learned counsel appearing for the respondent no. 1 has submitted that there is no unity of possession and unity of title as the original vendor by demarcation of big holding has transferred demarcated portion of land to different parties and accordingly the suit for partition may not be maintainable.

It prima facie appears that the vendor has sold the land after demarcating the suit property into several plots in favour of various

purchasers.

On the basis of admitted facts that the plaintiff and the defendant nos. 1 to 3 are in exclusive possession of demarcated portions of land and a building plan has been sanctioned and prima facie there may not be a unity of title and possession in view of the sale deeds disclosed, we do not wish to interfere with the order passed by the learned trial judge save and except that the construction raised on the piece of land shall not create any equity in their favour and shall abide by the result of the partition suit.

In the event, the respondent nos. 1 & 4 are willing to sell any flat or the suit property in question to any third party, the deed of conveyance should specifically mention about the pendency of the suit and such transfer shall abide by the result of the partition suit.

The security bond of Rs.5,00,000/- already furnished shall be kept alive till the disposal of the suit.

The views expressed above are only prima facie for the purpose of deciding the appeal arising out of an interlocutory order. All points are kept open including the maintainability of the suit to be decreed in the suit.

On such consideration, the appeal is disposed of.

CAN 1 of 2022 is accordingly disposed of.

Cross appeal being COT 21 of 2022 filed by the respondent no. 1 and the cross appeal being COT 26 of 2022 filed by the respondent no. 4 are also disposed of by this order.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

