

13. 13-04-2022

FMAT 81 of 2022

CAN 1 of 2022

^{sg} Ct. 8

Sushil Kumar Kedia & Anr.
Versus
Vijay Kumar Kedia & Ors.

Mr. Aniruddha Chatterjee, Adv.

Mr. Chayan Gupta, Adv.

Mr. Ayan Dutta, Adv.

Mr. Rittick Chowdhury, Adv.

...for the appellants

Mr. Jishnu Chowdhury, Adv.

Ms. Suchismita Sen, Adv.

Mr. Tanmay Agarwal, Adv.

Mr. Tirthankar Nandi, Adv.

...for the respondent

By consent of the parties, the appeal and the connected application are taken up together and disposed of by this common order.

The plaintiff filed a suit for declaration that the plaintiff is the undivided joint owner of the suit property and for cancellation of the deeds of gift dated 29th September, 2020 registered on 5th October, 2020, dated 11th November, 2020 registered on the same date, dated 27th November, 2021 registered on 2nd December, 2020 and 27th November, 2021 registered on 2nd December, 2020. There are other reliefs which are not relevant for the present purpose.

The plaintiff relied upon a Memorandum of Undertaking dated 15th May, 2017 to justify their lawful possession. It is alleged that the defendants have procured the other deeds of gift in their favour and are now trying to oust the plaintiff from the suit property.

The learned Trial Judge on consideration of the MOU and other materials on record, observed that the plaintiff was able to make out a prima facie case in favour of the possession and, accordingly, passed an impugned order. However, in the operative portion of the order, the learned Trial Judge directed the parties to maintain status quo as regards the nature, character and title of the suit property till 5th April, 2022 in addition to possession.

Mr. Aniruddha Chatterjee, learned Counsel appearing on behalf of the appellants submits that there is no finding that the defendants are changing nature or character or title of the suit property or that the plaintiff has any prima facie title in the suit property. There is no discussion in the impugned order on that effect. Moreover, it is submitted that the defendants became the owners of the suit property by virtue of the several registered deeds of gift executed in their favour. There is no prima facie finding in the impugned order that the plaintiff was able to make out a case with regard to invalidity of the several deeds of gift.

If we read the order as a whole, it would certainly give an impression that the learned Trial Judge intended to protect the possession of the plaintiff till the returnable date i.e. 5th April, 2022. On 5th April, 2022, the defendants ought to have approached the learned Trial Court for vacating the said interim order, instead, they waited for the disposal of the stay application. It is submitted on behalf of the plaintiff and not disputed by the appellant that on the prayer of the appellant, the learned Trial Court has fixed the matter on 4th July, 2022.

In view of the aforesaid, we modify the interim order to the extent that the parties are directed to maintain status quo with

regard to the possession of the suit property. In the event the defendants are willing to transfer their shares in favour of third party, it should be upon prior notice to the plaintiff which should not be less than 15 days from the date of the proposed transfer. The plaintiff shall be entitled to renew its prayer for other reliefs in the meantime before the learned Trial Court, as we are of the view that the learned Trial Court did not assign any reason for the rest part of the orders. It was only due to lack of reasoning that we have modified the interim order, which will not preclude the plaintiff to renew its prayer for the portion that we have modified due to lack of reason.

It is needless to mention that the learned Trial Judge while deciding the application, if filed in the meantime for renewal of the other reliefs or at the time of disposal of the injunction application on merits, shall not be influenced by any observations made by this Court in this order as the observations are prima facie and shall also take a prima facie view with regard to legality and validity of the several deeds of gift on the basis of which, the defendants are claiming title over the suit property.

Keeping in mind that the disputes are between the brothers and there are elements of settlement that can be explored if the parties are referred to mediation, we request the Chairman, State Legal Services Authority to appoint a Mediator from the panel of the Mediators to resolve the dispute between the parties amicably.

A copy of this order shall be sent to the learned District Judge, Barasat, North 24 Parganas by the Member Secretary, Mediation and Conciliation Committee, High Court, Calcutta for doing the needful.

We hope and trust that the parties arrive at a settlement before the learned Mediator and shall render all assistance to the learned Mediator to bring about a settlement and put an end to this litigation.

We would request the learned Mediator to conclude the proceeding by 30th June, 2022 and file a report before the learned Civil Judge (Senior Division), 2nd Court, at Barasat.

The parties are also directed to bring this order to the attention of the learned Trial Court.

The appeal being FMAT 81 of 2022 and the application being CAN 1 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.)