

02.05.2022
S/L No.14
KS

**F.M.A. 560 of 2022
With
I.A. No. CAN 1 of 2022**

**Indrajit Das & Ors.
-Vs.-
Neela Pramanick & Ors.**

Mr. Aniruddho Chatterjee
Mr. Sayan Sinha
Ms. Mou Ghosh
Mr. S. S. Biswas

.....For the Appellants

Mr. Amrit Kumar Nag
Mr. M. Roy

.....For the O.P. No.1

Affidavit of service filed in Court be kept with the record.

The appeal is arising out of an order dated 5th March, 2022 in connection with an application for injunction in a suit for declaration and injunction. The plaintiffs alleged that the plaintiffs are the owners of the suit property by virtue of a Deed of Conveyance dated 12th March, 1973. The Deed of Conveyance dated 12th March, 1973 executed by and between Maharaj Kumar Soumendra Chandra Nandi

and Maharani Nelima Probha Nandi in favour of Kalidas Sadhu, the father of the present plaintiffs.

Mr. Aniruddho Chatterjee, learned advocate for the appellants submits that the appellants are jointly in possession and one of the defendants Maharaj Kumar Soumendra Chandra Nandi and Maharani Nelima Probha Nandi of the suit property and written statement has been filed with a counter claim challenging the validity and legality of the deed of 1973.

During argument attention was drawn to the Learned Trial Court with regard to their nature and extent of possession in the property. The property purchased by the father of the plaintiffs has been demarcated by red pen and the said plan was disclosed in the plaint. It is alleged that the defendants on the basis of wrong recording in the corporation records are trying to encroach upon the property of the plaintiffs and preventing the plaintiffs from entering their own property. The respondents opposed the prayer of injunction. It was alleged that the mother and brother of the plaintiffs who are the co-owners of the property in question purchased by Kalidas Sadhu are not

made parties in the suit. The plaintiffs never made any attempt to rectify the alleged wrong recording in the corporation record for all these years. The defendants relied upon a signboard affixed in the property to show that the defendant no.11 has been in possession of the suit property. The Learned Trial Court on consideration of the record produced by the plaintiffs and the record produced by the defendants has in our view correctly relied upon the Deed of Conveyance as it is a better document of title as opposed to any recording in the corporation record. Any entry in the corporation record or any entry in the assessment roll does not create title in the suit property. On the basis of the Conveyance Deed, the Learned Trial Court arrived at a prima facie finding that the plaintiffs were able to establish their right, title and interest in respect of the said property. The question that arose then was whether any portion of the said suit property has been encroached. The plaintiffs claimed that they are in possession of the suit property and attempts have been made by the defendants to encroach upon the suit property. The nature and extent of encroachment has not yet been ascertained. However, on

the basis of the Deed of Conveyance it cannot be doubted that the plaintiffs have prima facie right, title and interest in respect of the suit property and such rights are required to be protected. There shall be an order of injunction restraining the defendants from causing any let, hindrance or obstruction in the enjoyment of the suit property by the plaintiffs. Mr. Chatterjee has raised an issue of maintainability of the suit on the ground that the plaintiffs have not prayed for further reliefs by way of recovery of possession. We are not impressed with such submission as the plaintiffs claimed to be in possession and in view of such assertion there is no need to claim any recovery of possession. The issue of encroachment can only be decided upon a Commissioner being appointed to ascertain the nature and extent of possession of the respective parties.

The issue of encroachment if any to be examined only after appointment of a Commissioner as may be available to either of the parties. The impugned order is modified to the aforesaid extent.

With the aforesaid observations, the appeal and the connected applications are disposed of.

There shall be no order as to costs.

(Sugato Majumdar, J.)

(Soumen Sen, J.)