

03 27.04.2022

Ct-08

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FMA 442 of 2022
with
I.A No. CAN 1 of 2022

Pradip Chimanlal Shah & Ors.
Vs.
Mrs. Mangala Dhur

Mr. Arjun Samanta
.... For the Appellants/Plaintiffs

Mr. Debraj De
Mr. Subhankar Chakraborty
Ms. Ruchira Manna
.... For the Respondent

The appeal has arisen out of an order dated 10th March, 2022. The plaintiffs filed the suit for declaration and injunction. The plaintiffs claimed to be a tenant in respect of the suit premises since 1985.

It is alleged by the plaintiffs that due to medical needs when the plaintiffs were out of the tenanted premises, the respondent has taken forcible possession of the suit property surreptitiously and prevented the plaintiffs from entering into the suit premises. The plaintiffs further alleged that on a criminal complaint the police authorities during investigation have found and recovered materials outside the suit premises belonging to the plaintiffs.

Learned counsel for the respondent submits that the appellants were not in possession of the suit property and the suit property was surrendered in favour of the landlord/respondent long back. In that case, in our view, the onus is upon the appellants/plaintiffs to establish such surrender.

In a suit of this nature, the possession is the first criteria to be established to claim an injunction and restoration of possession. The trial court seems to have been taken into consideration the documents wherefrom it would appear that no material or some materials of the plaintiffs were inside the room. The trial court is required to consider the rent receipts, the nature of possession and any material of the appellants inside the room when the police have visited during investigation.

It is well established that even a trespasser cannot be evicted in due process of law. However, considering the prayer made on behalf of the landlord/respondent, the trial court should consider the application for repairing work in the suit premises, after disclosing the nature of repairing work before the trial court by the landlord, by passing an order.

The respondent shall not alienate, let or encumber the suit premises till the disposal of the suit. The respondent shall file the written statement within two weeks from date.

The trial court is requested to dispose of the suit as early as possible without giving any adjournment to either of the parties, unless it is unavoidable.

On such consideration, FMA 442 of 2022 is disposed of. CAN 1 of 2022 is accordingly disposed of.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

