

18.04.2022
SL No.7
Court No.8
(gc)

**FMA 468 of 2022
With
CAN 1 of 2022**

**Pranita Hajara & Anr.
Vs.
Asis Chatterjee & Anr.**

Mr. Debnath Ghosh,
Mr. Shwetank Ginodia,
Mr. Bhavesh Garodia,
...for the Appellants.

In spite of service, the respondents are not represented nor any accommodation is prayed for on behalf of the respondents.

The appellants are the owners of a valuable property. The appellants alleged that the respondents have misused the power of attorney and were never in possession of the suit property. It was further alleged that fictitious documents were created by the plaintiffs/respondents in respect of the suit property, which are detrimental to the interest of the appellants. The appellants have also revoked the power of attorney. Various clauses of the power of attorney have been placed before us to demonstrate that the power of attorney holder has no interest in the property at all. However, more fundamental issue raised in this appeal is the disposal of the injunction application filed by the plaintiffs in the suit on 8th March, 2022 without assigning any reasons. It appears from record that on 8th March, 2022, the

application under Section 151 of the Code of Civil Procedure filed by the plaintiffs was fixed for hearing along with temporary injunction. Although the matters were disposed of by the learned Trial Judge. It does not appear from the impugned order that the injunction application was disposed of on merits. Curiously, the learned Trial Court while disposing of the application under Section 151 of the Code of Civil Procedure also disposed of the injunction application by directing the parties to maintain status quo as regards their possession in the suit property without ascertaining the nature and extent of the occupation of the plaintiffs in the suit property or whether the plaintiffs were at all in possession of the suit property.

However, having regard to the fact that an order of status quo was passed on 10th December, 2021, we dispose of the appeal and the application by directing the Trial Court to dispose of the injunction application filed by the plaintiffs on merits within eight weeks from the date of communication of this order without granting any unnecessary adjournment to either of the parties. The learned Trial Judge shall ascertain the status of the parties in respect of the suit property as on 10th December, 2021. The said direction is passed in view of the fact that there is a clear assertion by the appellants that the appellants/defendants were in possession of the suit property and in any event as claimed by the plaintiffs,

they were allegedly in occupation of 100sq.ft. in the suit property and the order of status quo as to possession cannot be passed in respect of the entirety of the property.

The order of status quo passed on 10th December, 2021 shall continue for a period of twelve weeks from date or till the disposal of the injunction application on merits, whichever is earlier.

With the aforesaid observation, the appeal being FMA 468 of 2022 and the application being CAN 1 of 2022 stand disposed of.

However, there shall be no order as to costs.

The appellants are directed to communicate this order to the learned Trial Court as well as upon the respondents immediately.

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.)