

22.08.2022
KC(6)

F.M.A. 1289 of 2021
Broadway Centre
-versus-
Brojonath Boral
With
CAN 1 of 2021
With
CAN 3 of 2022

Mr. Aniruddha Chatterjee,
Mr. Rahul Karmakar,
Mr. Sarosij Dasgupta,
Mr. Suman Majumder.....For the appellant.

Mr. Asit Baran Rout,
Mr. Tuhin Subhra Rout,
Ms. Ishita Rout.....For the respondent.

We admit the appeal.

A serious question will be involved during the trial of the suit with regard to the title of the subject property.

According to the appellants, the title has been declared to be vested in them by a decree of this court pronounced on 1st February, 2002 and affirmed by the division bench on 8th March, 2016 in Suit No. 378 of 1995 (Broadway Centre -vs- Gopal Das Bagri). The appeal against this judgment and decree was dismissed by the Supreme Court on 27th February, 2017.

In spite of this, Brojanath Boral maintained a suit against Gopal Das Bagree and after his death Nikhil Nischori Bagree (Title Suit No. 297 of 2000) before the

learned Judge of the 2nd Bench, City Civil Court at Calcutta and obtained a declaratory decree dated 31st August, 2018 in his favour with regard to the subject property. This, it is submitted, is absolutely contradictory to the above declaration of title made by this court.

Challenging this decree dated 31st August, 2018, the appellant has instituted the present suit in the learned City Civil Court (Title Suit No. 1811 of 2019) praying for inter alia an order of injunction adagainst the respondent restraining his creation of third party interest in the subject premises and other consequential reliefs.

Considering the above substantial question of title which is involved in the suit, we direct that the parties shall maintain status quo regarding occupation and possession of the said premises. Status quo shall also be maintained with regard to otherwise dealing with the property or creation of any encumbrance on it. No further tenant, licensee or occupier shall be inducted by the respondent without the leave of the learned court below.

It is submitted that up to 2019 only the appellant was collecting rent from the subject property. After obtaining the impugned decree from the learned court below from 2019 the respondent is collecting rent for part of the property.

Since both the parties are collecting rent and this is going on from 2019, we only direct that the respondent shall furnish a by-monthly statement of accounts of rent collected and expenses borne out of such collections to the appellant.

We request the learned court below to dispose of the suit within a year of communication of this order.

As it is submitted that there is no available bench to hear out this suit, we direct the parties or either of them to serve a copy of this order on the learned Chief Judge, City Civil Court, Calcutta, to enable him to take steps in the matter.

The impugned judgment and order is set aside.

The appeal (F.M.A. 1289 of 2021) and the connected applications (CAN 1 2021 and CAN 3 of 2022) are disposed of after dispensing with all formalities.

(I.P. MUKERJI, J.)

(SUBHENDU SAMANTA, J.)