

24.02.2022
SL No.6
Court No.8
(gc)

**FMA 82 of 2022
With
CAN 1 of 2021
with
CAN 2 of 2022**

**Sanjay Murarka & Ors.
Vs.
Praveer Murarka & Ors.**

(Via Video Conference)

Mr. Ratnanko Banerji, Sr. Adv.,
Mr. Nirmalya Dasgupta,
Mr. R.L. Mitra,
...for the Appellants.
Mr. Swatarup Banerjee,
Mr. Avishek Guha,
Ms. Akansha Chopra,
...for the Respondent Nos.1 to 7.

By consent of the parties, the appeal and the applications are treated as on the day's list and disposed of by this common order.

The appeal was admitted on 22nd September, 2021 by a Coordinate Bench. While admitting the appeal, the Coordinate Bench has passed the following order:-

“Considering the prima facie case, balance of convenience, the fact that the respondents have not lodged any caveat and that an order of status quo of the property or properties which are the subject matter of a partition and administration suit is usual, we direct that the parties shall maintain status quo regarding ownership and possession of the subject property or properties till 4th October, 2021 or until further orders whichever is earlier.”

This interim order was extended from time to time and today the matter is listed for extension of the interim order. The prayer is opposed on behalf of the respondents. Mr. Swatarup Banerjee, learned Counsel appearing on behalf of the respondent Nos.1 to 7 has submitted that the suit is not a partition and/or administration suit as was understood and the learned Trial Judge was justified in rejecting the said prayer for ad-interim order of injunction on the ground that the plaintiffs/appellants had failed to establish prima facie case. While admitting the appeal on 22nd September, 2021, the Coordinate Bench considering the same set of facts and documents passed an order of injunction as mentioned above. We feel that the objection raised by Mr. Swatarup Banerjee with regard to the nature of the suit and to establish that the appellants may not have any right, title and interest in respect of the said property should be addressed where the proceeding is pending instead of this Court deciding the said issue at this stage.

Accordingly, we extend the interim order passed on 22nd September, 2021 for a period of three months from the date of completion of pleadings or till the matter is finally decided by the Trial Court on merits.

The respondents shall file their written objection in the Trial Court in the form of an affidavit within one week from date. Reply thereto, if any, shall be filed within a week thereafter.

The direction in respect of filing of affidavits is peremptory.

In the event any of the parties fail to file any affidavits in terms of this order, no opportunity should be given to the said recalcitrant party to file any affidavits.

The learned Trial Judge shall dispose of the said matter without granting any adjournment unless it is avoidable.

It is needless to mention that the learned Civil Judge (Senior Division), 10th Court at Alipore or the Court in-charge of that Court shall decide the injunction application on merits without being influenced by any observation made by us in this order.

We have not considered on merits the objections raised by Mr. Swatarup Banerjee or the objections are likely to be raised before the Trial Court. The Trial Court shall consider the merits of the objections raised at the time of hearing the injunction application and following the principles on which the Court shall exercise its equitable jurisdiction following the well-settled principles of law in relation to disposal of the injunction application.

We make it clear that since we have not called for any affidavit from the respondents, all allegations are deemed to have been denied and disputed.

Accordingly, the appeal being FMA 82 of 2022 and the applications being CAN 1 of 2021 and CAN 2 of 2022 stand disposed of.

All parties shall act on the server copies of this order
duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)