

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

**F.M.A.T. 255 of 2022
With
CAN 1 of 2022**

Asit Baran Mitra

Vs.

Amiya Kumar Mitra & Ors.

**Mr. Tanmoy Mukherjee
Mr. Koushik Roy
Ms. Sayanti Bhattacharjee
Mr. Souvik Das
Mr. K.R. Ahmed
Mr. Rudranil Das**

.... For the Appellant.

Re: CAN 1 of 2022

We admit the appeal

We are of the opinion that this appeal is a little premature.

On 5th May, 2022, the learned Trial Judge, on an application moved ex-parte by the appellant/plaintiff refused to pass an interim order of injunction restraining the respondents from dealing with the subject property in question.

We are told that the application is returnable on 26th July, 2022 before the learned court below.

The suit is for partition among the co-sharers. The appellant/plaintiff apprehends disposition of the property by the respondents/defendant numbers 1, 10, 12 and 13 behind his back.

S.D.

Mr. Tanmoy Mukherjee, learned advocate appearing for the appellant/plaintiff submits that inspite of production of all necessary documents, the learned

judge ruled that in the absence of the original documents the appellant/plaintiff had not proved his prima facie case.

At the outset we make an observation that normally the original documents are not required to prove a prima facie case. Only if copies of the documents are disputed by the adversary, the court may look into the original documents to prima facie evaluate the genuineness of any document.

We are of the view that the case of the appellant/plaintiff should be considered afresh on the returnable date upon notice to and hearing the respondents and by a reasoned order by the learned court below.

Considering the prima facie case as made out in the grounds of appeal and the said apprehension of the appellant/plaintiff the parties shall maintain status quo regarding ownership and possession of the subject property till the learned court below is able to consider the prayer for injunction in the interim application on the returnable date.

The appeal FMAT 255 of 2022 and the connected application CAN 1 of 2022 are disposed of by this order.

(I.P. Mukerji, J.)

(Subhendu Samanta, J.)

