

08.09.2022
KC(13)

F.M.A.T. 256 of 2022
Bhutnath Dutta @ Bhutnath Datta
-versus-
Monmohan Dutta and Ors.
With
CAN 1 of 2022

Mr. Aniruddha Chatterjee,
Mr. Surya Chattopadhyay,
Mr. Arjun Samanta.....For the appellant.

Mr. Srijib Chakraborty,
Mr. Ramij Munshi.....For the respondents.

A partition and administration suit is pending in the learned court below.

The appeal before us is from a judgment and order dated 25th March, 2022 of the learned judge refusing to modify his earlier order of injunction dated 28th February, 2020 restraining construction on the subject property.

They are three brothers, Bhutnath Dutta, Monmohan Dutta and Santosh Kumar Dutta. Each are co-sharers of the undivided property. If the property had been divided according to their original individual shares, each would have been entitled to about 12 decimals. The admitted part of the case is that out of his share, about 6 decimals have been transferred by

Monmohan to Bhutnath whereby his share has become about 19 decimals.

According to Mr. Chakraborty, learned advocate for the respondents, Monmohan still retained 6.33 decimals. Mr. Chatterjee. Learned advocate for the appellant refutes this by saying that this parcel 6.33 decimals has also been transferred to his client Bhutnath by Monmohan.

Santosh Kumar Dutta, the client of Mr. Chakraborty, has informally divided his share of about 12 decimals amongst himself and his two sons Sandip Dutta and Sudip Dutta, each having 4.666 decimals.

The bone of contention between the parties, as we have understood, is over construction on the said premises. Monmohan Dutta is not in the picture before us. Both Bhutnath and Santosh want to make construction pending the suit before the learned court below. Bhutnath has already made construction over a substantial portion of land over an area below 19 decimals. Similarly, Santosh has made construction on a portion of the property over and area below his share of 12 decimals.

The question is whether either of the parties or both of them should be allowed to proceed with the construction.

Mr. Chatterjee submits that his client possesses a sanctioned plan for construction. There would not have

been much difficulty if Mr. Chakraborty had agreed to an order whereby upon leaving aside about 4 decimals of land, contiguous to and around the portion constructed upon by Santosh, Bhutnath was allowed to make construction. This is so because Santosh is entitled to a maximum of 12 decimals and has admittedly made construction over 8 to 9 decimals. He could maximum had been left with 3 to 4 decimals to augment the construction already made or to possess the land without making any construction. The rest of the land is claimed by Bhutnath.

Further, Mr. Chakraborty raises an apprehension that if construction was left to Bhutnath, the entire entrance part of the subject property, which is more valuable, would be taken possession of by him causing prejudice to Santosh.

We are of the view that this suit for partition and administration should be expedited and should be concluded within a maximum period of one year from date.

In the meantime, the entire matter as to whether the parties should be allowed to construct on the subject premises during pendency of the suit should be re-considered by the learned court below. The learned court below should explore the possibility of appointing a special officer or commissioner to visit the property, hold meetings with the parties and try to devise a way

to permit construction by the two contesting parties Bhutnath and Santosh. At the same time the court should proceed towards passing a preliminary decree conclusively determining the shares of the three brothers and thereafter take steps for final partition of the property.

With the above observations we set aside the order dated 25th March, 2022 in Title Suit No. 14 of 2020 before the learned Civil Judge (Senior Division), 2nd Court, Krishnagar, Nadia.

The petitions dated 24th January, 2022 and 21st February, 2022 before that court are to be re-considered by the learned judge upon hearing the parties and by a reasoned order to be pronounced within three months of communication of this order.

We clarify that any statement made by us about the shares of the parties is prima facie or tentative.

The appeal (F.M.A.T. 256 of 2022) and the connected application (CAN 1 of 2022) are disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

