

ASR 10.
9.11.2022

**FMAT 292 of 2022
With
CAN 1 of 2022**

**Avik Ghosh & Ors.
Vs.
Sukumar Ghosh & ors.**

**Mr. Purbangshu Chandra Mitra
Ms. Piyali Mitra**

.....For the Appellants

Mr. Manik Lal Poddar

...for the respondents

We admit the appeal.

Considering the facts involved, we are disposing of it, after dispensing with all formalities.

The impugned ex parte order was made by the court below on 30th June, 2022.

The returnable date was 25th July, 2022.

This appeal was filed on or about 19th July, 2022 and is coming up for our consideration today. In the meantime, the returnable date has been extended till 13th January, 2023.

The plaintiffs/appellants claim to be joint owners of the property in question with the respondents/defendants.

The ad interim order prayed for by them restraining the respondents/defendants from

dealing with the property or encroaching upon the appellants'/plaintiffs' occupation thereof was refused by the learned court below on the ground that they were unable to establish their title.

We are of the view that this is not a matter calling for an ex parte decision.

A proper order may be considered after hearing the parties.

We dispose of the appeal and the application with a direction on the learned court below to prepone the returnable date of the interim application to a date within November, 2022 and to hear out the same in the presence of the parties and pass a reasoned order within three months from the date of communication of the order. We clarify that whether an interim order is required to be passed or not, shall be decided on the returnable day.

In the meantime, the parties shall maintain status quo with regard to occupation and dealing with the property including creation of encumbrance, which shall abide by the order to be passed by the learned court below.

All points are kept open.

(I. P. Mukerji,J.)

(Biswaroop Chowdhury,J)