

13.09.2022
KC(5)

F.M.A.T. 296 of 2022
Dilip Nayek
-versus-
Padma Nayek and Ors.
With
CAN 1 of 2022

Mr. Ram Prokash Banerjee.....For the appellant.

Mr. Sabyasachi Mondal,
Mr. Sayan Mukherjee.....For the respondents.

We admit the appeal.

It is from an order dated 4th July, 2022 of the learned court below refusing to pass an order of injunction on the respondents restraining construction over the disputed property.

We notice from the said impugned order that it was returnable before the learned court below after 15 days of receipt of the notice.

We also observe from the photograph of the construction at the site handed over to us that it is large scale and continuing for quite some time.

This appeal is being moved more two months after the impugned order.

In such circumstances, we request the learned judge of the first court to hear out the application for interim order immediately in the presence of and upon hearing the respondents.

Before passing any direction for filing of written objection etc. the learned judge should re-consider on the available evidence whether an order of injunction should be granted or not at the ad-interim stage. It will be open to the learned court below to appoint a Commissioner/Special Officer to investigate the prima facie title to the property, the state of the construction and so on.

The interim application shall be disposed of by a reasoned order not later than three months from the date of communication of this order preferably.

The appeal (F.M.A.T. 296 of 2022) and the connected application (CAN 1 of 2022) were heard out dispensing with all formalities. They are disposed of by this order.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)