

04.08.2022

Court No.32
rpan/08

FMA 70 of 2021

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IA No.: CAN 1 of 2019 (Old No.: CAN11725 of 2019)

Smt. Jyotsna Das

- Versus -

The State of West Bengal & Others

Mr. S. Majumder,

Ms. Kalpita Paul

... for the Appellant.

Mr. Lalit Mohan Mahata,

Mr. Prasanta Behari Mahata

... for the State.

Mr. Sankha Shubhra Mukherjee,

Ms. Barnali Saha

... for the Private Respondent Nos.4-6.

Mr. Majumder, learned advocate appearing for the appellant/writ petitioner submits that the appellant is the owner of the house situated over the plot of land at LR Dag No.36, LR Khatian No.401, JL No.12, Mouza-Kadihati, Police Station - Narayanpur, District - North 24 Parganas. She was forcibly ousted from the said house. Aggrieved thereby, the writ petition was preferred. The same was dismissed by the order impugned in the present appeal, without considering the arguments as advanced on behalf of the appellant.

From the order impugned in the present appeal it appears that the writ petition, filed by the appellant, was dismissed by the learned Single Judge as there had been a suppression of fact on the part of the appellant. When the writ petition was taken up for hearing on 4th July, 2019, it was submitted on behalf of the appellant that

she had been ousted from her residence by her only child along with daughter-in-law. However, subsequently the Court was apprised that the respondent no.5 was not the only child of the appellant. She also had a daughter. In our opinion, the writ petition ought not to have been dismissed on the said sole ground as there was no intent on the part of the appellant to mislead the Court. The order impugned in the present appeal is, accordingly, set aside.

Mr. Mukherjee, learned advocate appearing for the private respondent nos.4-5 submits that from the year 2020 the respondent nos.5 and 6 are living in a separate house adjacent to the house in which the appellant wants to return and reside. The father of the respondent no.5 (the respondent no.4 herein) is suffering from serious ailments and there is a vacant room in the said house. They have no objection whatsoever if the appellant returns and resides in the said house.

Mr. Mahata, learned advocate appearing for the State submits that upon inspection it was ascertained that one room is vacant in the said house.

In view thereof, the appellant would be at liberty to return to the house and reside along with her husband in the said house.

With the above observations, the appeal and the connected application, being IA No.: CAN 1 of 2019 (Old No.: CAN11725 of 2019) are disposed of,

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)