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28-03-2022

FMA 250 of 2022
CAN 1 of 2021

Ct. 8

Javed Khan
Versus
Amina Begam & Anr.

Mr. Animesh Das, Adv.

...for the appellant

The appellant is the defendant in a suit for partition. The appellant is aggrieved by the order dated 27th September, 2021 passed by the learned Civil Judge (Senior Division), First Court, Howrah in an application filed by the plaintiff/respondent for injunction.

The learned Counsel for the appellant submits that the plaintiff was unable to establish their title in the suit property as the plaintiff failed to establish that her vendors are the legal heirs of the original owner. It is submitted that on the basis of the certificate issued by the Panchayat, the Trial Court decided the said issue in favour of the plaintiff.

We have perused the order under appeal in deciding the application in favour of the plaintiff. The learned Trial Judge has relied upon information regarding LR Dag No. 3300, the certified copy of deed of sale no. 3172 of 1966, the legal heirship certificate issued by Panchayat, the deeds of gift being nos. 1193 and 1197 of 2017, the deeds of sale being nos. 3294, 3295 and 3629 of 2021, the deed of sale being no. 1808 of 2021 and the letter of the learned Advocate addressed to the BL&LRO in connection with MP Case No. 655 of 2021.

At the interlocutory stage, the trial court is not entitled to hold a mini trial as the issues are required to be decided on the basis of the affidavit of evidence and in the event the plaintiff is able to make out a prima facie case and the balance of conveyance and in conveyance lies in favour of the plaintiff, the Court shall preserve the interest of the plaintiff in the property till the disposal of the suit.

The suit essentially is a partition suit. The plaintiff claims declaration of her share in the property. On the basis of the documents as noted in the said judgment, to which we have referred to earlier, it prima facie establishes the title of the plaintiff in respect of the said property, even if the legal heirship certificate disregarded the other documents on record to establish a prima facie right to the said property by the plaintiff.

On such consideration, we do not find any reason to interfere with the order passed by the learned Court below.

It is needless to mention that the observations are prima facie and shall not influence the trial of the suit.

The appeal being FMA 250 of 2022 and the application being CAN 1 of 2021 are, accordingly, dismissed. However, there shall 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.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)