

25.02.2022
SL No.7
Court No.8
(gc)

**FMA 1333 of 2017
With
CAN 1 of 2017
(Old No: CAN 8757 of 2017)**

**Sk. Masood & Ors.
Vs.
Rashida Bibi (Deceased) Represented by
Ersad Khan & Ors.**

(Via Video Conference)

Mr. Rabindranath Mahato,
...for the Appellants.

In a suit for partition, the appellants have filed an application for temporary injunction. The Trial Court, taking into consideration the content of the Will dated 28th December, 1987 by Idannesa Bibi, filed by the plaintiffs wherefrom it appears that Khatubennesa Bibi executed one power of attorney in favour of Idannesa Bibi to deal with her property arrived at a finding, having regard to the fact that in absence of any document to show that the said power of attorney was not acted upon and having regard to the fact that in the L.R.R.O.R Plot Nos.361, 35, 37 and 28 have been recorded in the name of four sons of Khatubennesa Bibi, i.e., Md. Rafik, Md. Rasid, Md. Sahid and Md. Mahid, refused to pass any ad-interim ex parte order as the said documents, *prima facie*, establishes that the said sons of Khatubennesa Bibi are in possession of the same, after inheriting her 1/3rd share in the suit property.

On the basis of the available record, we feel that there is no reason to take a contrary view. Moreover, the plaintiffs had failed to file any document before the Trial Court showing their possession in the suit property.

The learned Counsel appearing on behalf of the appellants submits that the possession is not important if the appellants are able to establish that they have share in the property as possession by one co-owner is the possession of the other co-owners. However, the appellants are required to establish *prima facie* case in the property in absence of the legal heirs of Khatubennesa Bibi, whose names were recorded in the L.R.R.O.R., the findings arrived at by the Trial Court in refusing to extend the order of temporary injunction passed earlier, do not call for any interference. This order, however, shall not prevent the appellants to renew its prayer for injunction on better particulars.

In view of the fact that the suit is pending since 2011, we direct the learned Civil Judge (Senior Division), 1st Court, Midnapore to dispose of the suit as expeditiously as possible preferably within a period of one year from the date of communication of this order without granting any unnecessary adjournment to either of the parties unless it is avoidable.

With the aforesaid observation, the appeal being FMA 1333 of 2017 and application being CAN 1 of 2017 (Old No: CAN 8757 of 2017) stand disposed of.

We make it clear that our observation shall not influence the learned Trial Judge while deciding the matter finally.

The learned Registrar Administration (L&OM) is directed to communicate this order to the learned Civil Judge (Senior Division), 1st Court, Midnapore for doing the needful, preferably within one week from date.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)