

DL. April 19,
17. 2022

F.M.A.T. 1139 of 2019

Shyam Sundar Kedia
Vs,
Sandip Kedia & ors.

Mr. Supratim Dhar,
Ms. Munmun Tewary,
Mr. Dhananjay Nayak,
...for the appellant.

Re: CAN 11154 of 2019 (stay)
filed on November 21, 2019.

Although the matter is appearing under the heading “application”, by consent of the parties the appeal itself is taken up for consideration upon dispensation of all formalities.

The present appeal has arisen out of an order passed by the learned Civil Judge (Senior Division), First Court at Paschim Medinipur, in a suit for partition. The appellant is aggrieved by the order impugned as he was directed not to change the nature and character of the suit property till disposal of the suit.

The learned trial judge, upon noticing the fact that the agreement for sale could not be registered as the defendant no. 1 has failed to put in the proper stamp duty due to lack of fund, restrained the defendant no. 1 to continue with the construction work in terms of the development agreement alleged to have been entered into between the defendant no. 1 and the developer, namely, Radhejunk Developer. The learned trial judge had also taken note of the fact that the defendant no. 1 has entered into the agreement with the developer by making an assertion that he is the sole owner of the suit property.

In view of the admitted fact that the agreement for sale

has not been registered on the date, when the impugned order was passed, and that the innocent purchasers of the flats would be likely to be prejudiced, we do not find any reason to interfere with the order passed by the learned trial judge. However, with regard to the submission made on behalf of the appellant that the entire stamp duty has been paid, the appellant can always approach the trial court for modification of the impugned order dated September 30, 2019 by establishing that title has passed in favour of the defendant no. 1 and that he has now become the owner of the suit property in which case there would be no difficulty for the defendant no. 1 to make any construction on the suit property.

The appeal and the connected application for stay, thus, stand disposed of.

There will be no order as to costs.

dns

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)