

02 05.8.2022

Ct-08

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FAT 431 of 2012
with
I.A No. CAN 3 of 2022

Amal Das
Vs.
Bandana Das & Anr.

Mr. Partha Pratim Roy
Mr. Dyutiman banerjee
... For the Appellant

Mr. Pratip Mukherjee
Mr. Omar Faruk Gazi
Mr. Kiron Chandra Saha
Ms. Rima Banerjee
... For the Respondent no. 1

Mr. Dhilon Sengupta
... Representing as Special Officer

The report filed by the Special Officer is taken on record.

The remuneration of the Special Officer shall be paid by the appellant in course of today.

The dispute is between son and the daughter of late Nanda Dulal Das. The said Nanda Dulal Das during his lifetime carried on business in the name of style of M/s. Nanda Dulal Das Hardware Stores. For some reason, Nanda Dulal was unhappy with his son and gifted the residential house to the plaintiff/respondent no.1 along with the business under the name and style of M/s. Nandadulal Das Hardware Stores.

The appellant alleged that subsequent to the deed of settlement in favour of Bandana Das there is another unregistered document by which the Nandadulal appears to have divided shop room in the tenanted premises, more particularly described in 'Kha' schedule of the said deed of Apos Chuktiparta. 'Ka' schedule property refers

to residential house gifted to Bandana Das and Bandana Das admittedly is in possession of the said residential house. The said Chuktipatra appears to have been executed on 16th March, 2001. This document is a subsequent document by which the father wanted to divide the tenanted portion of the premises into two halves.

The plaintiff alleged that she was ousted from the possession of the room and the business has also been snatched by the appellant. She also seems to have denied the existence of Apos Chukti. The Apos Chukti bears the signature of late Nandadulal Das. The signature was duly identified and marked as Exhibit without any objection.

In order to resolve the controversy and in order to ascertain whether the plaintiff was completely ousted from the tenanted portion or not, we appointed Mr. Dhilon Sengupta, an advocate of this Court, as Special Officer. It appears from the report of the Special Officer that the schedule of the property mentioned in the Apos Chuktipatra is divided into two parts. There is a brick built wall separating the two adjacent shop rooms with separate entry.

The Special Officer submits that the decree-holder could not produce the key in respect of the portion appears to be in occupation of the decree-holder/Respondent as she claimed to have lost the key. The allegation of the plaintiff/Respondent is that the defendant no. 1/Appellant herein by muscle power did not allow the plaintiff to enter into the said portion in any event.

In view of the fact that the decree-holder is now the absolute owner of the residential house. The appellant/Defendant has delivered vacant

possession he had in respect of the dwelling house. The subsequent deed, namely, Apos Chuktipatra, by which the tenanted portion was divided clearly evinced that late Nandadulal Das separated the 'kha' schedule property in favour of his two children by dividing the tenanted portion into two halves. The said Apos Chuktipatra, in our view, has been properly proved and acted upon.

The report of the Special Officer proves that separation had already taken place by making partition wall dividing the shop room into two, we modify the decree to the extent that the plaintiff/Respondent is entitled to get permanent injunction restraining the defendants, their men and agents and servants from causing any disturbance or interference in any manner whatsoever in respect of peaceful possession and enjoyment of the plaintiff in respect of the business in the suit shop room. In addition thereto, the plaintiff is entitled to run the business under the name and style M/s. Nanda Dulal Das Hardware Stores at premises no. 81, Bidhan Sarani, Hatibagan Market, Kolkata as decreed by the Trial Court.

The report of the Special Officer is made part of a decree.

In view of the above, the appeal being FAT 431 of 2012 is thus allowed.

In view of the disposal of the appeal CAN 3 of 2022 is also disposed of.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)

