

19.12.2022
Item No.4
Ct. No.7
CHC

C.O. 3630 of 2022

Sri Gobardhan Das
Vs.
Malati Das & ors.

Mr. Debjit Mukherjee,
Mrs. Susmita Chatterjee,
Mrs. Dipanwita Ganguly,
Mr. Kaustav Bhattacharya
...for the petitioner

Mr. Anjan Banerjee,
Mr. Kinkar Pandit
...for the opposite parties

Subject-matter of challenge is against the order dated 21st November, 2022, passed in Misc. Appeal No.41 of 2022 of learned Additional District Judge, 1st Court, Uluberia, Howrah, staying the order of the trial court, granting ad interim injunction of *status quo*, with regard to nature, character and possession of the subject property under reference. It is thus against an order of Appeal Court upon reversing order of trial court

Admittedly, this is a suit for partition. Opposite parties/defendants are made parties to the partition suit, as cosharers. Petitioner has acquired his right, title and interest to the suit property on the strength of a partition deed, executed on 7th December, 1950. The opposite parties admittedly, acquired right, title

and interest from one Parul Bala Das, on the strength of a subsequent transfer effected. The opposite parties are thus the transferees of the suit property to the extent of their shares, as already held by Parul Bala Das. Parul Bala Das happens to be the sister of Sudhansu Mohan Das and Dinobandhu Das, the predecessors of petitioner/plaintiff.

Upon furnishing such inputs Mr. Mukherjee submits that after the trial court has granted interim protection in lawful exercise of discretion, the court below in appeal ordinarily ought not to have stayed the operation of such order passed by the trial court granting protection, and there should have been made all out efforts to dispose of the appeal at the earliest, without granting any stay of operation of the order granting injunction.

It is thus strenuously submitted by Mr. Mukherjee that in the event of order, granting stay of operation of the trial court's order, it would result ultimately in allowing the appeal at the initial stage, without venturing for hearing of appeal.

Mr. Mukherjee further contends that after being emboldened by the order of court below in appeal, there has been further construction undertaken, which may not be allowed to be undertaken any further, and in the event of further construction being

allowed to be taken in the meantime, as per order of first lower appellate court, there may not be anything left for any adjudication before the court below in appeal.

A reliance is thus placed by Mr. Mukherjee on a decision reported in **2005 SCC OnLine Cal 482/AIR 2006 Cal 195** delivered in the case of ***Mobassor Hossain & ors. vs. Shri Manik Chandra Pal & ors.*** to submit that the first lower appellate court ought to have directed itself to secure expeditious disposal of the appeal, without granting stay of operation of the order passed by the trial court, granting interim protection.

According to Mr. Mukherjee, the same view was reiterated in a subsequent decision delivered by co-ordinate Bench of this Court in the case of ***Smt. Manbasa Devi vs. Calcutta Landing & Shipping Co. Ltd. & ors.*** reported in **2015 SCC OnLine Cal 6416**.

Per contra, Mr. Anjan Banerjee, learned advocate appearing for the opposite parties denies the submission raised by Mr. Mukherjee submitting that there has been no further construction undertaken towards reaching completion of the structure already raised, and thus submits that a cosharer cannot prevent another cosharer from undertaking any

structure, merely by reason of grant of ad interim injunction of *status quo*..

There is no dispute between the parties that parties are cosharers in a suit for partition already pending before the court below. The Misc. Appeal is pending before the court below. When it is the definite stand of the opposite parties that even after order passed by the court below in appeal dated 21st November, 2022, there has been no further construction undertaken towards reaching completion, this Court is of the view that the issues raised by both the parties to this case, may be raised before the court below in appeal, and all such issues may be addressed by the court below providing an opportunity of hearing to either of the parties to this case.

In the meantime, no further construction may be pursued by the opposite parties maintaining *status quo* with regard to nature, character and possession of the suit property till the hearing of the Misc. Appeal before the court below.

This Court reposes trust and confidence upon the court below in appeal that the pending appeal may be disposed of expeditiously as possible, preferably before the end of April, 2023.

This would not, however, prevent the court below to take up the matter on the date already scheduled before the court below, if any already fixed earlier for the purpose.

The impugned order passed by the court below in appeal stands modified accordingly to the extent mentioned hereinabove.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)