

25.04.2023  
KC(10)

F.M.A. 109 of 2023  
Subham Paul  
-versus-  
Sankari Mondal and Ors.  
With  
CAN 1 of 2023  
With  
CAN 2 of 2023

Mr. Devajyoti Barman,  
Ms. Sanjukta Basu Mallick.....For the appellant.

Mr. Joydeep Kar, Sr. Adv.,  
Mr. Sagar Bandyopadhyay,  
Mr. Arijit Chakraborty,  
Mr. K.K. Maity,  
Mr. Supriyo Kumar Roy,  
Mr. Tamal Banerjee,  
Ms. Puja Rajbhar.....For the respondent  
nos. 7 and 8.

Mr. Kamal Krishna Pathak,  
Mr. Souvik Maji.....For the respondent  
no. 19.

We are in a position to dispose of the appeal,  
dispensing with all formalities.

The appearing respondents/defendants are  
developers. They claim to be the owners of and  
undertaking development work in a large property of  
over 100 cottahs under the Sonarpur Police Station in  
Kolkata. The appellant/plaintiff claims to have 1/24<sup>th</sup>  
share in dag nos. 230 and 231 and 1/16<sup>th</sup> share in dag  
no. 232 in the said property. This claim is very seriously  
denied by the respondents/defendants.

In a suit inter alia for declaration, partition and injunction filed in the court below by the appellant/plaintiff on 7<sup>th</sup> December, 2018 the said court had passed an ex parte interim order directing the respondents/defendants to maintain status quo over the property. Soon thereafter the respondents/defendants filed an application under Order 39 Rule 4 of the Code of Civil Procedure for discharge of the said interim order.

In course of time the injunction application together with the Order XLI Rule 4 application became ready for hearing. On 3<sup>rd</sup> January, 2023 the learned court below disposed of the injunction application by vacating the interim order. The plaintiff/appellant wants continuance of the said order.

We find that the impugned judgment and order of the learned court below is quite well reasoned. It is trite that when an order of injunction is made or refused by a reasoned order, the appellate court respects the discretion of the learned court below and does not interfere with the said order. It is only interfered with if the order is perverse or in such gross disregard of facts and evidence that it is unconscionable to support it or is otherwise most unreasonable. That is not the case here.

In any event, the share which the plaintiff/appellant claims is quite insignificant compared to the

defendants'/respondents' share. Any restraint order would very seriously affect these major co-sharers.

In that view of the matter, we direct that the suit be made ready and heard out expeditiously preferably within one year of communication of this order.

The appellant/plaintiff shall make an application before the learned court below within ten days from date to pass necessary directions for expeditious hearing of the suit e.g. discovery, inspection etc.

The respondents/defendants shall be permitted to develop the property and deal with the same subject to the result of the suit.

On the prayer of learned counsel for the appellant/plaintiff we make it clear that any observation made by us or by the learned court below at this stage shall be taken to be prima facie and tentative.

The appeal (F.M.A. 109 of 2023) and the applications (CAN 1 of 2023 and CAN 2 of 2023) are disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

