

1 20.1.2023

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

**F.M.A. 642 of 2021
With
CAN 2 of 2021
With
CAN 3 of 2022**

**Sri Biswajit Das
Vs.
Smt. Ranta Roy (nee) Das**

Mr. Manabendra Thakur Mr. Partha Srathi Das	... For the Appellant.
Mr. Ranjit Kumar Roy Ms. Ekta Ranjan Shaw	... For the Respondent.

Re: CAN 2 of 2022, CAN 3 of 2022

At the instance of the respondent, this appeal and the connected applications have been listed today under the heading 'To Be Mentioned'.

The appeal is ready for hearing upon filing of paper books.

We find that this appeal has been preferred by the appellant/plaintiff from the following ad-interim order obtained by him from the learned court below:

S.D. ***'That there shall be an ad-interim injunction restraining the defendant from alienating the suit property till 18.12.20. However, the prayer for ad-interim injunction for protection of the possession of the petitioner in respect of schedule 'B' property and from preventing the defendant from collecting rent are rejected at this stage.
Plaintiff is directed to comply with the provisions of Order 39 Rule 3 (a) and (b) CPC at once.
To 18.12.2020 for SR, AD of injunction notice and show cause by the defendant against the injunction application of the plaintiff.'***

The appellant/plaintiff is fully satisfied with the order of injunction restraining the respondent from alienating the suit property but is aggrieved by refusal of his prayer 'for protection of the possession of the petitioner in respect of the Schedule – B property'.

The possession of the parties with regard to the properties is highly disputed.

We think it fit and proper that the learned court below ought to have made a determination of the status quo regarding possession of the property before passing the following part of the order :

'However, the prayer for ad-interim injunction for protection of the possession of the petitioner in respect of schedule 'B' property and from preventing the defendant from collecting rent are rejected at this stage'.

Dispensing with all formalities, we are disposing of this appeal (FMA 642 of 2021) and the connected applications (CAN 2 of 2021, CAN 3 of 2022) by affirming the impugned judgement and order restraining the respondent/defendant from alienating the suit property but setting aside the part of the order relating to the possession and collection of rent.

From the impugned judgement and order we notice that the application was returnable on 18th December, 2020 before the learned court below.

The learned court below shall immediately fix a future date to hear out the interim application in the presence of the respondent/defendant, after exchange of

affidavits, on appropriate direction being made by that court.

The interim application with regard to possession and collection of rent may be decided upon hearing the parties by a reasoned order within a period of two months from the date of completion of affidavits but not later than three months from date.

All points are kept open before the learned court below.

The lower court records be sent back to the learned court below as expeditiously as possible.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

