

13.07.2023
Ct. No. 13
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F.M.A.T. 112 of 2022
With
CAN 1 of 2022
With
CAN 2 of 2022

Md. Nasir Sualeh & Ors.
Vs.
Omer Farooque & Os.

Mr. Amal Krishna Saha,
Mr. Tapan Sil

... for the appellants

Mr. Prantick Ghosh,
Mr. Pranab Kr. Bhattacharyya,
Mr. Prasad Bhattacharyya,
Mr. Bitan Das

...for the respondents

1. The appellants have obtained instructions.
2. This Court has carefully considered the judgment and decree dated February 28, 2022 passed by the learned Judge, VIII Bench, City Civil Court, Calcutta in Misc. Case No. 1135 of 2012 arising out of T.S. No. 1965 of 1994. Admittedly, the decree was ex parte.
3. The defendants/appellants had urged, in the written statement filed in the Court below, that the Plaintiff had gifted away her property on March 1, 1988.
4. This is the only issue that remains for consideration, apart from the issue of the

determination of the shares of the appellants in the suit property.

5. Considering the fact that the appellants have filed written statement in the Court below, this Court is inclined to give one chance to the appellants herein to contest the suit.
6. The preliminary decree dated August 19, 2009 shall stand set aside.
7. This Court has, however, noted that the defendants/appellants have been casual in their conduct in the Court below and have not paid the costs on time. Notwithstanding the directions made hereinabove, that are purely in the interest of justice, this Court has also found the defendants/appellants to be rather negligent in defending the suit in the Court below.
8. Hence the aforesaid order shall take effect upon the defendants/appellants paying a sum of Rs. 1 lakh as costs, within a period of 7 days to the respondents/plaintiffs. Since the original plaintiff has died and there are 4 substituted plaintiffs, the sum of Rs. 1 lakh shall be divided equally and paid by cheque of Rs. 25,000/- each to the 4 surviving plaintiffs. Evidence of payment of costs shall be paid in the Court below.

9. Let discovery and inspection be completed by the parties within a week from date mandatorily and positively.
10. The suit itself shall, thereafter, be taken up on a day-to-day basis and disposed of in accordance with law by the Court below. The suit shall be disposed of mandatorily and positively, within a period of 2 months from date. No unnecessary adjournments shall be allowed to any of the parties.
11. The Learned Chief Judge of the City Civil Court at Calcutta shall assign the suit to a bench which has a regular and functioning presiding Judge.
12. This Court has been informed that the defendants/appellants herein have filed two revisional applications being C.O. 1487 of 2022 and C.O. 1294 of 2023.
13. Counsel for the appellants on instructions submits that his clients shall withdraw the said revisional applications.
14. With the aforesaid observations, F.M.A.T. 112 of 2022 along with CAN 1 of 2022 and CAN 2 of 2022 shall stand disposed of.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)