

04.08.2023
Court No.13
Item No.1
AP

**FMA 598 of 2023
With
CAN 1 of 2023**

**Shri Manosh Garai
Vs.
Shri Anup Kumar Garai and Ors.**

Mr. Dinabandhu Chowdhury
Mr. I. Paul
Mr. K.R. Ahmed
Mr. S. Panda

...For the Appellant.

Mr. Lutful Hoque
Ms. Taharima Khatun

...For the Respondent No.4.

1. There is no caveat filed by any of the respondents.
2. The appellant is aggrieved by order No.12 dated 28th February, 2023, by which an order of injunction and status quo passed on 10th May, 2022, has been vacated under Order 39 Rule 4 of the CPC.
3. The 4th defendant in the suit has caused appearance before this Court. It is submitted by the 4th defendant/respondent that the three brothers and/or the only co-sharers are enjoying their respective shares in the property, independently and separately. There is no need for any injunction.
4. Admittedly, till date there has been no partition by metes and bounds or declaration by any competent Court or any settlement between the parties demarcating the respective shares.

5. Until a formal demarcation is effected either mutually by and between the parties, or in a partition decree, the original order of injunction ought not to have been vacated by the Court below.

6. This Court notices from the submissions of the learned counsel for the appellant and the respondent No.4 that there is otherwise no dispute with regard to the shares of the respective parties. Both the appellant and the appearing respondent seek leave to file terms of settlement of a mutually agreed partition in the Court below.

7. Since there is no caveat from any of the respondents and one of the respondents being respondent No.4 is represented before this Court, no useful purpose would be served in keeping the appeal pending.

8. This Court, therefore, restores the injunction dated 10th May, 2022 passed in the Court below until disposal of the suit. The parties may file terms of settlement within two months from date.

9. If, however, terms are not filed, let written statements be filed by the parties, if not done so till now, within a period of two weeks from date.

10. Let inspection and discovery be completed a week thereafter.

11. The suit shall be taken up for hearing and disposed of as expeditiously as possible preferably within a period of six months from date.

12. The aforesaid order is unlikely to prejudice any of the parties. The parties may also apply for judgement upon admission in the Court below since it is submitted by learned Counsel for the 3rd defendant in the suit that his client has stated in the written statement that a decree for partition may be passed as the shares of the parties are admitted.

13. With the aforesaid directions, FMA 598 of 2023 is disposed of.

14. In view of the disposal of FMA 598 of 2023, connected application being CAN 1 of 2023 shall also stand disposed of.

15. There shall be no order as to costs.

16. 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.)