

26.06.2023

**FMAT 155 of 2023
With
CAN 1 of 2023**

**Sri. Partha Pramanic
Vs.
Sri. Atanu Pramanic & Anr.**

Mr. Chitapriya Ghosh
Mr. Samir Kumar Adhikari

... ... for the appellant

Mr. Debabrata Chowdhury

... ... for the respondents

We admit this appeal.

At the same time we observe that there is nothing
in this appeal which would impel us to keep it pending.

Dispensing with all formalities we have heard out
the appeal and are disposing of it by this order.

Mr. Chitapriya Ghosh, learned advocate appearing
for the appellant submits that the impugned judgement
and order dated 24th February, 2023 of the learned Court
below was passed in the second suit between the parties
(Title Suit No.191 of 2023). There is also an earlier suit
pending between the parties (Title Suit No.1976 of 2022).
In short, the first suit is for declaration of shares of the
parties in the subject property whereas the second suit
relates to partition thereof. He says that the second suit
should have been stayed.

We notice that in the impugned order dated 24th
February, 2023 there is no reference to any application
for stay of the suit. Not even a submission in that
direction is recorded.

An interim order of injunction restraining the parties to maintain *status quo* till 24th March, 2023 has been made.

The application was contested by the defendant no.1 but not by the defendant no.2.

The application should be deemed to be pending.

On the available facts and on the submissions made the impugned order dated 24th February, 2023 does not call for any interference. However, the learned Court below may be approached to fix a date for hearing of the injunction application in the presence of the defendant no.1 and the defendant no.2 after giving an opportunity to the defendant no.2 to file his written objection.

The continuance of the interim order may be reconsidered by the Court. All points which are urged by the appellant in this appeal including the question of stay of the second suit or the possibility of conflict of orders made in the above two suits are kept open before the learned Court below.

The interim application may be disposed of by the learned Court below within two months from date.

The appeal and the connected application are disposed of.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)