

18.04.2023
KC(7)

F.M.A.T. 374 of 2022
Soma Dey
-versus-
Binapani Dey and Ors.
With
CAN 1 of 2022
With
CAN 2 of 2023
With
CAN 3 of 2023

Mr. Aniruddha Chatterjee,
Mr. Pranay Mukherjee.....For the appellant.

Mr. Nirmalya Dhaar,
Ms. Priyanka Mondal.....For the respondents.

The appellant has only one grievance against the impugned judgment and order dated 20th August, 2022 passed by the learned court below. In the partition suit involving two properties, one described under schedule A and the other under schedule B, an order directing the parties to maintain status quo with regard to possession and nature and character of the property has been made with regard to A whereas no such order has been made with regard to B.

The claim of the appellant/ plaintiff that the schedule B property is joint and divisible is hotly contested by the respondents/defendants who claim that it is individually owned by the respondent/defendant no. 1.

The learned judge in the impugned judgment and order seems to have come to a final finding to the following effect:

“Since jointness of title is found to be absent with respect to schedule ‘B’ property so it cannot be said that plaintiff has prim facie case of partition in schedule ‘B’ property.”

Whether the respondent/defendant no. 1 has exclusive title to the schedule B property or not will be decided at the trial. Therefore, the impugned judgment and order is modified so as to extend to the schedule B property also. None of the parties shall deal with the subject properties in any manner till further orders of the learned court below.

The trial court shall proceed to determine the suit.

Dispensing with all formalities, the appeal (F.M.A.T. 374 of 2022) and connected applications (CAN 1 of 2022, CAN 2 of 2023 and CAN 3 of 2023) are disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

