

16.10.2023.
Item No. 48.
Court No. 13
ap

F.M.A.T. No. 409 of 2023
With
I.A. No. CAN 1 of 2023

Sajjad Akbar Siddiqui
Versus
Mrs. Musarrat Alam Siddiqui & Ors.

Mr. Saptangshu Basu, ld. Sr. Advocate,
Mr. Khwaja A. Rahman.

...For the appellant.

1. Despite service of notice, the respondents/caveators are not represented. Affidavit-of-service filed in Court today is taken on record.
2. The Advocate-on-record for the appellant undertakes to rectify the defects pointed out by the Stamp Reporter dated 20th September, 2023.
3. The appellant is aggrieved by an order dated 27th July, 2023 passed by the learned Judge, 12th Bench, City Civil Court at Calcutta in Title Suit No. 1760 of 2019.
4. The suit is for partition and injunction. The appellant is the defendant in the suit. Prior to the impugned order, the Court below on 7th February, 2023 passed an order of status quo under Order 39, Rules 1 and 2 of the Code of Civil Procedure in respect of Item Nos.VIII, IX, X, XIII, XV and XVI under the Schedule to the plaint. The other properties were stated to be the personal self-acquired properties of the appellant.

5. However by the impugned order, the Court below has appointed Receiver to conduct inventory in respect of each of the properties in the Schedule to the plaint.

6. Mr. Saptangshu Basu, learned Senior Advocate appearing on behalf of the appellant has submitted that his client had consented to partition of the properties indicated hereinabove and more fully described in the order dated 7th February, 2023.

7. In view of the above, this Court is of the view that the Court below has committed an error in directing Receiver to inventorize all the Scheduled properties in the suit.

8. The respondents have demonstrated a no objection to the prayers in the stay application being CAN 1 of 2023 by reason of non-appearance.

9. Mr. Basu has, however, argued before this Court that the impugned order is even otherwise bad in law since the satisfaction of the ingredients of Order XL, Rule 1 of the Code of Civil Procedure, 1908 has not been appropriately discussed in the impugned order.

10. This Court has carefully noted the arguments of the Counsel for the appellant and has considered the impugned order as well as the pleadings in the Court below and particularly for injunction, the objection of the petitioner, filed in the Court below thereto, to the application under Order XL, Rule 1 of the Code of Civil Procedure.

11. Indeed it is true that the Court below ought to have discussed whether it was just, necessary and convenient to order inventory through a Receiver of the suit properties, to which there is no dispute raised by the appellant.

12. However, considering the fact that the inventory of the properties would ennure the benefit of all parties, this Court is not inclined to interfere with the same on such ground.

13. Having regard to the above discussions, this Court is inclined to modify the impugned order dated 27th July, 2023 to restrict its operation only to the properties against Item Nos. VIII, IX, X, XIII, XV and XVI to the Schedule of the plaint. The Receiver so appointed shall submit a report in the Court below after conducting inventory on the date fixed i.e. 13th December, 2023.

14. The parties shall be at liberty to make appropriate submissions as regards the need for formal appointment of Receiver on the aforesaid properties. The Court may pass a reasoned order thereon after hearing all the parties.

15. It shall also be open to the parties to argue and/or apply and/or lead evidence, in the court below to include the other properties in the hotchpot of the joint family properties. The doctrine of *his pendens* would be automatically attracted to all such proven properties.

16. With the aforesaid observations, F.M.A.T. No. 409 of 2023 shall stand disposed of.

17. Consequently, CAN 1 of 2023 shall also stand disposed of.

18. The appellant shall communicate this order to the respondents as well as the Receiver and the Court below.

19. There will be no order as to costs.

20. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)