

December 4, 2023
Sl. No.19
Court No.19
s.biswas

CO 3530 of 2023

Ganesh Chandra Das
vs.
Kartick Chandra Das and others

Ms. Ishita Kundu

... for the petitioner

It appears that the suit is between two brothers who have allegedly got the property from their father, by virtue of a deed of gift.

It appears from the plaint that a single storeyed building was gifted to the two brothers. Ground floor was allegedly gifted to the petitioner and the roof of the ground floor had been given to the defendant. Subsequently, the defendant constructed a building over the roof. According to the petitioner, the defendant is restraining the petitioner from using the staircase and the terrace, which are common areas.

Hence, the suit was filed alleging disturbance of peaceful possession of the plaintiff and creation of obstruction to the plaintiff's use of the staircase.

The petitioner prayed for declaration that he was the owner of the suit property as described in the schedule and further declaration that the petitioner had a common right over the staircase and the roof above the first floor.

The learned trial judge directed that the application for injunction be served upon the opposite party and refused to pass an order of

injunction on the ground that the opposite party was required to be heard.

Aggrieved, the petitioner filed an appeal. The appeal was registered as Misc. Appeal No.105 of 2023 before the learned Additional District Judge, Fast Track 4th Court, Barasat. The petitioner prayed for interim stay. The learned appellate court recorded the submission of the petitioner and came to the conclusion that the parties were co-sharers in respect of the property in question and refused any interim relief.

This court is of the view that the learned appellate court rightly held that the prayer for an interim injunction should be heard in the presence of both the parties, as admittedly, both the parties were co-sharers in respect of the property in question.

The facts do not inspire this court to pass any protective order in favour of the petitioner at this stage, which would amount to deciding the miscellaneous appeal. The learned Additional District Judge, Fast Tract 4th Court at Barasat will fix a date for hearing of the said appeal and application upon granting adequate opportunity to the opposite party to file the writ objection to the application and the appeal.

The application and the appeal shall be disposed of together, but not later than three months from date. Parties will not be granted unnecessary adjournments. Petitioner will be at liberty to bring this order to the notice of the learned lower appellate court.

The revisional application is accordingly disposed of.

There shall be no orders as to costs.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)