

26.09.2023.
Item No. 1.
Court No. 1
ap

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION
(Appellate Side)

F.M.A.T. No. 19 of 2023

In

I.A. No. CAN 1 of 2023

Avik Kumar Roy
Versus
Sayantan Roy & Ors.

Mr. Bikramaditya Ghosh,
Ms. Supriya Singh.

...For the appellant.

Mr. Nabankur Paul,
Mr. Abhishek Sakar.

....For the respondent no.1.

Mr. Hirak Barman,
Mr. Pretom Das.

...For the State.

1. The instant appeal is directed against order dated 13th March, 2023 passed by the learned Civil Judge (Senior Division) Sadar, Cooch Behar in Title Suit No. 25 of 2023. By the impugned order, the Court below has declined ex parte ad interim order.

2. The facts in brief are that the plaintiff and the defendant no.1 are the legal heirs of Abanish Chandra Roy, Dharani Shankar Roy and Gobinda Chandra Roy. There are other legal heirs as well of the properties of the aforesaid three persons.

3. The defendant no.1 has sometime in 2022 gifted three decimals of land to the Sate for the purpose of construction of a Public Health Centre. The plaintiff is

seriously aggrieved since the property has not been partitioned by metes and bounds amongst the plaintiff and the defendant no.1 and the other co-sharers. While the three cents comprise in a part of one of the plots of land of the aforesaid three Roys, there are several other properties. There appears to have been a conditional partition on 24th January, 1969.

4. It appears prima facie to this Court that the partition by metes and bounds, demarcating the shares of each co-sharers has not occurred till date.

5. In the above circumstances, it would be inappropriate for any co-sharers to gift any portion of the property to any third party.

6. This Court has found force of the submissions of the learned Counsel for the respondent/defendant no.1 that a large number of other co-sharers are required to be impleaded as party to the respondents to the instant proceedings. A large number of other plots of land as also the other properties may have to be included in the schedule to the suit property to the plaintiff. The parties may do so in accordance with law and the Court below shall take note of the same.

7. However, in the facts and circumstances of the case, this Court is of the view that there must be an order of injunction on all the parties restraining any construction or change in the nature and character of

any of the properties mentioned in the conditional partition deed dated 24th January, 1969.

8. The parties and/or their agents, legal heirs, successors and/or assigns shall be restrained from any way dealing with or disposing of or encumbering the property in question.

9. In view of the above order, the parties are ad idem that the application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 may be disposed of and the orders passed by this Court shall abide by the final result of the suit.

10. All parties and particularly the plaintiff shall be entitled to file an application for addition of all and every other co-sharers in respect of the said property. The schedule to the suit property shall comprise in all and every plots of land and property of Abanish Chandra Roy, Dharani Shankar Roy and Gobinda Chandra Roy.

11. The contesting defendants and added party may file written statement and/or additional written statement within a period of six weeks of their impleadment.

12. The Court below shall also, if necessary, consider notifying through publication in the newspapers for ascertaining any of the legal heirs of the aforesaid three Roys, namely, Abanish Chandra

Roy, Dharani Shankar Roy and Gobinda Chandra Roy.

This is left to the discretion of the Court below.

13. It is expected that the suit itself is taken up and disposed of in accordance with law within a period of six months from date.

14. With the aforesaid observations and discussions, F.M.A.T. No. 19 of 2023 shall stand disposed of.

15. In view of the disposal of the instant appeal itself, the connected application being CAN 1 of 2023 shall also stand disposed of.

16. There will be no order as to costs.

17. 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.)