

16.07.2024
Court No.13
Item No.6
AP

FMAT 443 of 2015
With
IA NO: CAN 1 of 2015 (Old No: CAN 4998 of 2015)
With
CAN 3 of 2017 (Old No: CAN 2586 of 2017)

Mahesh Ram
Vs.
Halima Mansoor & Anr.

Mr. Dhananjay Nayak
Ms. Aparupa Ghosal

... For the Appellant.

Mr. V. B. Agarwal

... For the Respondents.

1. This appeal is directed against an order dated 23rd March, 2015 passed by the learned 4th Bench, City Civil Court at Calcutta in T.S. No.35005 of 2014 (Mahesh Ram Vs. Halima Mansoor & Anr.).

2. The appellant/plaintiff claims that he is a lawful tenant under the erstwhile owners of the property namely Ainu Choudury and subsequently Gita Chowdhury, Gopal Chowdhury (deceased) and Kedar Choudhury. The said erstwhile owners are stated to have sold the property to Halima Mansoor and Sk. Mansoor. The said Halima Mansoor and Sk. Mansoor have filed Ejectment Suit No.602 of 2012 against the erstwhile original tenant Ranjit Kr. Kanouja, through him, the appellant/plaintiff claims rights.

3. It is also submitted by learned counsel for the appellant herein that the said Ranjit Kr. Kanouja surrendered the premises in favour of the erstwhile landlords and a fresh tenancy has been created in his favour. This is seriously disputed by the respondents. The aforesaid are mere submissions recorded based on some pleadings available before this Court.

4. What is, however, relevant for the purpose of the instant appeal is that the sole appellant herein has entered appearance in Ejectment Suit No.602 of 2012 on 12th March, 2013 and has filed an application under Order 1 Rule 10(2) of the Civil Procedure Code. In the above circumstances, the appeal itself should not have been entertained as the maintainability of the T.S. No.35005 of 2014 is seriously in doubt. This Court has serious reservation on the maintainability of T.S. No.35005 of 2014 either in part or in whole. No conclusive opinion, however, is expressed in this regard at this stage in the instant appeal.

5. This Court finds absolutely no infirmity in the impugned order dated 23rd March, 2015. No injunction can be passed if the suit itself is not maintainable. The said order calls for no interference.

6. Leaving remedies open to the parties, as may be advised in law, FMAT 443 of 2015 shall stand dismissed.
7. In view of the dismissal of the FMAT 443 of 2015, connected applications, if any, shall stand disposed of without any orders.
8. Interim orders, if any, shall stand vacated.
9. There shall be no order as to costs.
10. All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)