

18<sup>th</sup> September, 2024  
(D/L No.12)  
Ct. No.4  
(SKB)

**FMAT 144 of 2024**  
**With**  
**IA NO: CAN 1 of 2024**

Paarimal Kumar Ghosh and others  
Versus  
Smt. Shipra Pal and others

Ms. Juin Dutta Chakraborty,  
Mr. Bidan Modak  
... for the appellants.

1. Heard learned counsel for the appellants. The appellants were the plaintiffs in the trial court seeking a partition.
2. The specific claim of the plaintiffs was that they were having the ownership of the property in question. The defendant nos.22 to 24 who never had any concern with the lands since last 25 to 30 years, all of a sudden, have come with a view to oust the plaintiffs and forcibly take possession of the suit property.
3. In spite of advocate notice having been issued inviting them to amicably partition the properties, they are avoiding to do so.
4. The learned trial court has considered the application filed by the plaintiffs under Order XXXIX Rules 1 and 2 C.P.C. The application is relying on the notice issued on 18<sup>th</sup> January, 2024 calling upon the defendants to come for a partition as well as some entries in the record of rights, in support of the claim to ownership of the lands in question. A Municipal Assessment Report has also been produced before the trial

court which showed that the plaintiffs' father had died long back, that is in the year 1979 itself.

5. Though the plaintiffs/appellants have claimed to be the owners, they have not come out with any specific document showing ownership of the title.
6. Based on such *prima facie* findings, the learned trial court has refused to grant any ad interim injunction and directed for service of notice upon the defendants. The application under Order XXXI Rules 1 and 2 is thus pending consideration before the trial court.
7. The learned counsel for the appellants has submitted that unless an order of *status quo* is granted, the defendant nos.22 to 24 are likely to cause irreparable injury by ousting the appellants from possession and the pending suit for partition is likely to be adversely affected.
8. The notice for partition was issued as way back as January, 2024, whereas the court is considering the prayer for ad interim injunction today in the end of September, 2024 and it is not the case of the appellants that in the meantime, during the past 9 months the defendants have taken any hostile steps to oust the plaintiffs.
9. We are unable to agree with such submissions. Based on the above noted *prima facie* findings the trial court has declined the relief of ad interim injunction. In our opinion, the trial court's order dated 03.04.2024 requires no interference as no such urgency was made out based on the *prima facie* case for grant of ad interim injunction without issuing notice.
10. Without expressing any opinion on the merits of the claim made out by the plaintiffs/appellants since the same remains to be considered by the trial court, we find no reason to

interfere with the order under appeal dated 3<sup>rd</sup> April, 2024.

11. While dismissing the appeal under Order XLI Rule 11, we consider it appropriate to observe that the pending application before the trial court ought to be considered expeditiously without granting any unnecessary adjournments and preferably within four weeks from the date of reopening of the trial court post Puja Vacation. Accordingly, the application being CAN 1 of 2024 is also disposed of.

**(Madhuresh Prasad, J.)**

**(Supratim Bhattacharya, J.)**