

29.07.2024
Court No.13
Item No.65
AP

FMA 4354 of 2015
With
IA NO: CAN 1 of 2015 (Old No: CAN 9645 of 2015)
With
CAN 2 of 2022 (not found in the file)

Smt Pushpa Rani Biswas & Ors.
Vs.
Sri. Parimal Biswas

Ms. Shohini Chakrabarty
Ms. Prajaaini Das

... for the Appellant.

Mr. Biplab Guha

... for the Respondent.

1. Mr. Guha, learned counsel for the respondent, seeks leave to retire as his client has not contacted him at all. Such leave is granted.

2. The appeal is directed against an order refusing injunction under Order 39 Rule 1 and 2 in TS No.171 of 2015 being a suit for partition.

3. The sum and substance of the suit is that the original plaintiff No.1, Pushpa Rani Biswas was allotted land by the Government of West Bengal under the Refugee Rehabilitation Scheme.

4. The defendant in the suit, son of the original plaintiff, is stated to have fraudulently obtained a gift deed of the entire property in his name.

5. In the suit the plaintiffs/appellants have prayed for partition and a declaration that the alleged gift deed dated 11th October, 2012 is void ab initio.

6. After filing of the suit an application under Order 39 Rule 1 and 2 was filed. Injunction was refused at the ad interim stage since according to the Court below the plaintiff could not show urgency.

7. While admitting the appeal, the coordinate Bench has on 19th October, 2015 ordered the parties to maintain status quo in respect of the possession of the property and not to change the nature or character or create any third party interest therein. The interim order has been extended until disposal of the suit on 20th June, 2022.

8. Having heard the learned counsel for the appellants, this Court is of the view that an order of status quo in a partition suit, where there is also a prayer for declaration of a gift deed as fraudulent, an order of injunction follows as a matter of course.

9. In these circumstances, the appeal is disposed of by ordering status quo to be maintained in respect of the possession of the suit property until disposal of the suit. Neither party shall be entitled to create any third party interest in the suit property.

10. The respondent shall be at liberty to file written statement, if not earlier filed, within a period of six weeks from date. There shall be a cross order for discovery and inspection within a period of two weeks thereafter. The suit shall be taken up for hearing as early as possible by the Court below.

11. In view of the disposal of the FMA 4354 of 2015, all connected pending applications, if any, shall also stand disposed of.

12. There shall be no order as to costs.

13. Let the LCR, if any, be sent back to the Court below.

14. Registry shall communicate this order to the Court below.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)