

Item No.- 114
18.12.2024
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**FMAT 435 OF 2024
with
CAN 1 OF 2024**

**Sri Debasis Das
Versus
Sri Dilip Kumar Das & Ors.**

**Ms. Deblina Lahiri,
... for the Plaintiff/Appellant**

**Mr. Sharanya Chatterjee,
Ms. Atreya Chakraborty,
... for the Respondent No. 1**

1. The instant appeal arises from Order No. 12 dated 6th November, 2024 passed by the learned Civil Judge (Sr. Div.), Kalyani, Nadia in Title Suit No. 33 of 2024 by which an application for temporary injunction was rejected.
2. Admittedly, the father of the parties was the owner of 6 decimal of land. During his lifetime, he executed and registered a deed of gift by which 3 decimal of land with the specific demarcation was gifted to the defendant no. 1/respondent no. 1. The rest of the property was retained by the said owner and after his demise, by Law of Succession, it devolved upon his heirs and the legal representatives.
3. The plaint was filed alleging that the defendant no. 1/respondent no. 1 is raising construction without leaving the mandatory space required under the law impairing the access to light and air. Several other allegations are made that the said construction is without any sanction granted by the

authorities and infact, is being continued by force and, therefore, the defendant no. 1/respondent no. 1 should be restrained from making any construction.

4. The defense taken by the said defendant no. 1/respondent no. 1 have been succinctly jotted down in the impugned order wherefrom it appears that after acceptance of the gift from his father, the demarcated portion of the property comprised in the said deed of gift was possessed by the said defendant. It is further averred that they approached the Panchayat authorities for sanction of the plan, which was duly accorded and the construction, thereafter, was ensued strictly in terms of the said sanction plan.
5. The stand of the plaintiff/appellant before the Trial Court was that the property remained undivided and co-sharers cannot continue to make construction in the best portion of the said property nor can be permitted to raise construction impairing the natural light and air in the structure possessed by the plaintiff/appellant.
6. It appears from the record that the plaintiff/appellant had already approached the competent authority raising a grievance over the construction having being made and in the event it is found that the said construction is not in conformity with the sanction granted to the defendant no. 1/respondent no. 1, it is open to the said competent authority to take an appropriate step.
7. The moment the property is owned by the sole owner, it cannot be regarded as a joint property.

The exclusive owner has a right to deal with his property and in the event he gifted a portion of the same with specific demarcation, it creates an exclusive right into the person unless such transaction is declared by the Court to be void. The heirs and the legal representatives of the exclusive owner cannot claim the entire property to be joint as their rights flows through the said exclusive owner and, therefore, any act or thing done by the admitted owner during his lifetime remained binding on the successors. By virtue of a deed of gift, the admitted owner severed a portion of his property and therefore, the remaining portion may become joint after his death amongst the heirs but the heirs cannot claim an exclusive right in respect of a portion gifted by the admitted owner by executing a valid deed in favour of a person.

8. Not an iota of piece of paper was produced before the Court to support that there is any departure from the sanction granted by the competent authority and, therefore, it is not open to the Court to hover around such issue only for the purpose of fishing out an evidence for a litigant. The Court must decide the application for temporary injunction on the basis of the documents available before it and cannot pass any order which would tantamount to a gathering an evidence for any of the litigant. The Trial Court does not find any prima facie case to pass an order of temporary injunction.
9. We also do not find any infirmity in the said order.
10. The appeal being **FMAT 435 of 2024** stands dismissed on merit.

11. Connected application being **CAN 1 of 2024** is disposed of.

12. No order as to costs.

13. Urgent certified Photostat copy of this order, if applied for, be supplied to the parties after complying with all necessary formalities.

(HARISH TANDON, J)

(PRASENJIT BISWAS, J)