

Item-
12. 21-02-2025

sg Ct. 37

FMA 847 of 2024
CAN 1 of 2024
CAN 2 of 2024

Ranjit & Co.
Versus
Kanta Debi Berlia

Mr. Jishnu Saha, Sr. Adv.
Mr. Arkaprava Sen
Mr. Sayantan Kar

...for the appellant

Mr. Sarvapriya Mukherjee
Mr. Varun Kothari
Mr. B.N. Joshi
Mr. A. Agarwalla
Ms. P. Garain

...for the respondent no.1

Mr. Siddhartha Banerjee, Sr. Adv.
Ms. Soni Ojha

...for the respondent nos. 2&3

1. This matter has been assigned to this Bench by an Administrative Order of the Hon'ble the Chief Justice dated 10th January, 2025.
2. The appellant claims to have entered into an agreement for sale with the respondent and has filed a suit for specific performance.
3. Mr. Jishnu Saha, learned Senior Counsel appearing on behalf of the appellant has submitted that notwithstanding a prior agreement, a subsequent agreement was entered by and between the respondent and the third party and in a clandestine manner, a decree was obtained without the notice and knowledge of the present appellant. It is further submitted that an application under Order 21 Rule 100 and 101 of the Code of Civil Procedure is pending in the

execution proceeding in which an order of status quo was passed. Mr. Saha has also referred to the earlier orders passed in this proceedings in a suit to demonstrate that the appellant was enjoying an ad interim order which was vacated on 4th March, 2024. However, the appellant is in possession of the property in question.

4. The appeal is arising out of an order by which the order was vacated. In the event no interim protection is granted to the plaintiff at this stage, the appeal eventually may be infructuous. Moreover, prima facie, there appears to be an agreement between the parties and the consideration has passed under the agreement.
5. Under such circumstances, the stay application is disposed of with the observation that the appellant shall not be evicted without due process of law. The disposal of the appeal shall not stand in the way of Executing Court in determining the rights, titles and interest of the appellant in the pending proceeding.
6. In view of the fact that the persons who are now sought to be impleaded in the appeal through the application being CAN 2 of 2024 were parties in the suit and have been inadvertently left out, we permit the said application for impleadment of the said respondents in the appeal.
7. The department is directed to include the names of the persons mentioned in CAN 2 of 2024 as respondents in the appeal.
8. At this stage, the learned counsel for the parties have suggested to dispose of the appeal with the aforesaid direction.

9. In view of the aforesaid, the appeal and the connected applications are disposed of with the limited protection till the issue is decided finally.
10. In the event the pending application before the executing court is decided on merits against the appellant, it is needless to mention that this interim protection shall stand automatically vacated.
11. The learned Trial Judge is requested to dispose of the application filed by the appellant under Order 21 Rule 100 and 101 to decide the said application as expeditiously as possible without being influenced by any observation in this order or by the impugned order.
12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)