

16.09.2025
Item No.14
Ct. No.01
Saikat

FMAT/307/2025
with
IA NO: CAN/1/2025
with
CAN/2/2025

DIPAK SELAMPURIA AND ORS.
VS.
SAMAR KUMAR KUNDU AND ORS.

Mr. Steven S. Biswas, Adv.

...For the Appellants

Mr. Samiran Mandal, Adv.

Mr. Nitish Samanta, Adv.

...For the Respondent/Plaintiff

Mr. Debanik Banerjee, Adv.

Mr. Hazaifa Shahid, Adv.

...For the Respondent Nos.2 & 3

1. The appellants claim to be co-sharers of the property forming the subject-matter of the suit for specific performance. In an earlier round of litigation they filed an application for leave to prefer an appeal against similar order and a co-ordinate Bench directed the learned trial court to hear the present applicants. Although such opportunity was given to the present applicants, no application was filed by the present applicants alleging that any order which may likely be passed in the suit would affect their valuable rights in respect of the property in question.
2. We have been given to understand that some co-sharers have entered into an agreement with third parties in relation to their shares and that agreement is the subject-

matter in the Title Suit No.33 of 2021 in which the impugned order was passed. Admittedly, the applicants are not parties to the said agreement and they would not be bound by any order that may be passed in a proceeding in which they are not parties. However, if the said order is likely to cause hardship or affect the right of the applicants in enjoyment of the suit property upon being aware of such fact, it would always be open to the parties to approach the learned trial court with appropriate application. We wonder while no such application was filed by the applicants before the learned trial court. Instead they prefer to file an application, they preferred leave to file an appeal.

3. However, same situation arose in which a co-ordinate Bench on 11th October, 2023, passed an order in which, *inter alia*, the following observations were made:-

“It is the cardinal principles of law in respect of a joint property that all the co-sharers possess the said joint property not only in commensurate with the shares they held but on behalf of other co-owners unless such co-owners claim exclusion. However, the co-owners enjoin possession jointly in every molecule of the property so long the said joint property is not partitioned by a decree of the Court or the deed being executed by the co-owners in respect thereof.

An order of status quo with regard to possession cannot be construed to have been restricted to the possession of some of the co-owners who are arraigned as party in the suit for specific performance of an agreement, as such possession cannot be regarded as exclusive, but jointly with the other co-owners. Every coowner has a right to make development in the joint property subject to the consent of the other co-owners or sometimes may be permitted to make construction provided they do not claim any equity at the time of final decree to be passed in a partition suit.

The blanket order of status quo with regard to the possession, nature and character of the suit property impact the right of the other co-shares in dealing with the same and, therefore, the Court should be slow and circumspect in passing the order in such form, which would have a larger impact on the rights of the other cosharers.

On the last occasion, we directed the respondents to produce the original of the agreement for sale, which, in fact, has been produced in Court today. It revealed therefrom that the said agreement is engrossed on the non-judicial stamp paper having valued at Rs. 50/-, though the consideration money shown in the purported agreement is Rs. 50,00,000/-.

A point is taken that the said purported agreement does not contained requisite stamp duty and in view of Section 33 and Section 35 of the Indian Stamp Act, the same cannot be received in evidence but cannot be acted upon and in support thereof, the judgment of five Judges Bench rendered in case of M/s. N.N. Global Mercantile Private Limited vs. M/s. Indo Unique Flame Ltd. & Ors., reported in (2023) 7 SCC 1, for the proposition that so long the document excisable to a stamp duty is not impounded, it would be regarded to be void till such time and, therefore, the Court cannot act upon the same.

Though the judgment of the five Judges Bench rendered in the above noted decision has been doubted in a subsequent decision and the matter has been referred to the further Larger Bench yet the law, which has been declared, cannot be overlooked by the High Court. The word “acted upon” as appearing in Section 35 of the Indian Stamp Act has to be understood in proper perspective when admittedly the application for temporary injunction is decided on the basis of an affidavit.

Since the agreement does not contain the requisite stamp duty and the nature of the impugned order is such, which cannot be sustained vis-à-vis the present appellants, we, therefore, cannot concur with the finding of the trial Court in passing an injunction in such form.

Accordingly, the order impugned is set aside.

However, the trial Court shall proceed with the application for temporary injunction after affording an opportunity of hearing to the respective parties and shall dispose of the same in accordance with law.”

4. The applicants, however, did not file any application before the learned trial court. It would be open to the applicants to apply before the learned trial court for modification and variation or for recall of the said order. The learned trial court is directed to consider the said application, if filed, within a period of one week from date and decide the said application within a reasonable time after giving reasonable opportunity to all the parties and decide the application without being uninfluenced by any observation made in this order.
5. With the aforesaid observation and direction, the appeal as well as the pending applications are disposed of.
6. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[SOUMEN SEN, C.J.(ACTING)]

(APURBA SINHA RAY, J.)