

Item-
11. 17-09-2025

FMAT 399 of 2025
CAN 1 of 2025

sg Ct. 1

Ramaprasad Hati & Ors.
Versus
Tapas Mondal & Ors.

Mr. Biswaroop Bhattacharya
Ms. Shohini Chakraborty
Ms. Sharmistha Ghosh
Mr. Amit Ghosh

...for the appellants

Mr. Sujit Banerjee

...for the plaintiff/respondent

1. We have heard the learned Counsel for the parties.
2. The dispute is with regard to the portion of the A schedule property which the appellant, in the one hand, claims to have purchased in an auction sale in a SARFAESI proceeding but the plaintiff claims to have purchased a portion of A-1 schedule property on the other hand. The plaintiff alleged that, by virtue of registered Deed of Sale being No. 3496 of 2011, the defendant no.6 sold and transferred A-1 schedule property mentioned in the registered Deed of Sale being No. 0366 of 2019 to the plaintiff and out of the portion of the said A schedule property, the present appellant is claiming possessory and other interest and tried to disturb the possession of the plaintiff.
3. The plaintiff filed a suit for partition in which the present appellant was added as a respondent. There is no specific prayer for cancellation of Sale Deed as the plaintiff realized that the property sold in favour of the appellant was in a SARFAESI proceeding and the appellant is an

auction purchaser. The appellant cannot be described as a co-sharer in relation to the plaintiff, inasmuch as, if they were to challenge the said sale transaction, they should have to approach the Tribunal. The appellants became the owners of the property by virtue of the Sale Deed executed in their favour in the SARFAESI proceeding. The original owner of the land, namely, the defendant no.6 admittedly had mortgaged properties that was sold in the SARFAESI proceeding. Insofar as the title of the appellant is concerned, it should restrict to the mortgaged deed and the description of the property is mentioned therein.

4. The plaintiff cannot have any right over and in respect of the property forming the subject matter before the Tribunal in which the proceeding was concluded by confirming the sale in favour of the appellant.
5. The appellant is an auction purchaser. It was the incumbent upon the learned Trial Court, in such circumstances, not to disturb the possession of the appellant without first ascertaining even prima facie the land of the plaintiff in respect of the properties those were duly mortgaged by deposit of original title deeds at the time of sanctioning the loan.
6. If the plaintiff has purchased the property during the subsistence of the mortgaged then any interest taken by the plaintiff in the land would be subject to the mortgage. This aspect of the matter has not been gone into by the learned Trial Court in deciding the matter.
7. It would be open to the appellant to file an appropriate

application for demarcation of the land by appointment of an Advocate Commissioner to avoid any future complication.

8. In the event any such application is filed, we would request the learned Civil Judge (Senior Division) at Arambagh, Hooghly to dispose of the said application as expeditiously as possible.
9. In view of the fact that no such application was filed and in absence of any report being placed before the Court clearly indicating the respective position of the parties in relation to the suit property, we are not disturbing the interim order for the time being and it shall be revisited upon such an application being filed by the appellant.
10. The interim order shall be restricted only to A-1 schedule property as described in the schedule to the plaint.
11. With the aforesaid observations, the appeal and the application stand disposed of.
12. Urgent photostat certified copy of the order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

[Soumen Sen, C.J. (Acting)]

(Apurba Sinha Ray, J.)