

AD- 28
Ct No.16
03.03.2025
(SSS)

FMA 232 of 2025
With
CAN 1 of 2024

Sri Anil Mahata
Vs.
Sri Rabi Mahata and Ors.

Mr. Jaharlal Roy,
Ms. Kavita Rani

...For the Appellant.

1. The present application for stay has been filed in connection with a miscellaneous appeal which has been admitted by this court. The appeal has been preferred against an ad-interim order of status quo granted by the learned Trial Judge directing defendant Nos. 1 to 3, including the present appellant, from changing the existing character, nature and possession of the suit property as on date and to preserve the suit property in the manner as it is, till the next date.

2. Learned Counsel appearing for the appellant submits that the appellant has been in occupation of his allotted portion of the suit property for more than 60 years. It is further submitted that when the portion of the present appellant was transferred by one of the plaintiffs to the appellant, an impression was given that there was partition by amicable

arrangement between the original owners in the year 1996.

3. It is submitted that as such, the learned Trial Judge erred in law in restraining the appellant from making construction over the suit property at this belated stage. Learned Counsel also places reliance on paragraph No. 3 of the plaint filed by the plaintiff/respondents where it has been admitted that the plaintiffs and the defendants have been possessing the suit property all along by amicable arrangement as per their respective shares.

4. We find from the averments made in paragraph No. 3 of the plaint that although it has been admitted that the plaintiff and the defendants are possessing the suit property by amicable arrangement as per their shares, in the same breath, it has been pleaded that there has been no actual partition by metes and bounds.

5. It is well-settled that for a proper partition by metes and bounds to be effected, the same has to be either by way of a decree of court or by a registered deed of partition, both of which are absent in the present case. Although there is a line of judgments which holds that amicable arrangement should be honoured by the parties thereto, the said principle of estoppel operates between the parties and not against any third party/purchaser.

6. At the ad-interim stage, the learned Trial Judge could not have entered into any pleadings of the defendants, since those were not on record, and had to proceed on the premise of the averments made in the injunction application.

7. On the basis of the averments made in the injunction application, we find that in view of denial of actual partition, the partition suit was rightly held to be prima facie maintainable and an order of status quo passed. Although the plea of the appellant that the appellant has already started construction and that the defendants and the plaintiffs are possessing their respective portions as per their shares cannot be brushed aside, we cannot proceed on such premise before the written objection of the defendants incorporating such pleadings come before the Trial Court. Hence, at this stage, we do not find any illegality in the impugned order.

8. Instead of refusing the prayer for stay and keeping the appeal pending before this court, which would not enure to the benefit of either the appellant or the plaintiffs/respondents, we accordingly dispose of the appeal along with the application in the light of the following observations:-

(i) FMA 232 of 2025 along with CAN 1 of 2024 are disposed of without interfering with the impugned order and directing the defendants in the suit to file their written objection(s) to the injunction application

before the Trial Court as expeditiously as possible, positively within a fortnight from date.

(ii) Upon such written objections being filed, the learned Trial Judge shall endeavour to dispose of the injunction application on merits, upon giving an opportunity of hearing to both sides, as expeditiously as possible, preferably within April 30, 2025.

9. It is made clear that this court has not entered into the merits of the case and it will be open to the learned Trial Judge to independently adjudicate the injunction application and, subsequently, the suit on their own merits without being swayed in any manner by any of the observations made above.

10. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)