

13.02.2026
Court No.13
Item No.6
pk

FMA 1351 of 2022
With
CAN 3 of 2023
CAN 4 of 2024

Smt. Asha Rao
Vs.
Ashok Kumar Bhotika & Ors.

Ms. Sormi Dutta

... For the appellant.

Ms. Sonali Bhattacharya,
Ms. Megha Das.

..for the respondent no. 1.

1. CAN 4 of 2024 is an application for modification of the order dated 18.11.2022 and to direct the records of T. S. No. 20 of 2009 to be returned to the learned Civil Judge (Senior Division), 4th Court at Alipore.

2. The appeal is directed against an order dated 27th October, 2006 passed by the 2nd Civil Judge (Senior Division) at Alipore in T. S. No. 100 of 1994. The suit is for partition.

3. During the pendency of this suit on an application filed by the plaintiff/appellant, the trial court by the impugned order directed the rent in respect of one of the properties subject matter of partition to be kept in a separate account by the first defendant. The rent is to the extent of about Rs.3 lakh. The tenant/lessee is stated to be the ICICI Bank. The trial judge in its

wisdom in an application filed by the plaintiff/appellant under Order 39 Rule 10 read with Sections 94(a) and 15 of the Code of Civil Procedure directed the defendant no. 1 should collect the monthly rent of Rs.2.85 lakhs from the property mentioned in schedule 'C' to the plaint and keep the same in a separate account and to maintain accounts therefor.

4. This Court is further informed that in respect of one or more of the properties that is the subject matter of T.S. No. 100 of 1994, there is a probate proceeding pending.

5. It is further informed by counsel for the parties that the subject partition suit has been kept in abeyance until disposal of the probate proceeding.

6. This Court cannot find fault with such order since if one of the properties that is the subject matter of the partition suit lawfully devolves by reason of testamentary disposition on one of the parties, the same cannot form part of the hotchpot of the partition suit.

7. It is submitted by counsel for the appellant as well as the appellant herself in person, who is present in Court that the hearing of the probate proceeding is under way and witness action is on.

8. This Court, therefore, is of the view that there is no useful purpose that would be served in the present appeal remains before this Court.

9. The instant appeal being FMA 1351 of 2022 is disposed of with the following directions: The first defendant/respondent in the suit shall in terms of the impugned order dated 27th October, 2006 account for every month's rent since October, 2006 and keep the same invested in an interest bearing deposit account and submit quarterly accounts to the appellant/opposite party. The respondent shall also submit accounts of the rent received from the said property prior to 2006 particularly since after enhancement of the rent to Rs.3 lakhs.

10. In the event of any violation of the trial court's order by the respondent already committed, the appellant shall be entitled to apply before the trial judge in T. S. 100 of 1994, inter alia, under Order 39 Rule 2(a) of the CPC.

11. O. S. No. 2 of 2015 now pending before the learned 11th Additional District Judge at Alipore is directed to be expedited. The Trial Judge in the aforesaid O. S. Suit is requested to dispose of the same as expeditiously as possible preferably within a period of six months from date.

12. No unnecessary adjournment shall be given to any of the parties.

13. The Trial Court Records in the instant appeal shall be returned to the trial court, namely, the learned Civil Judge (Senior Division), 4th Court at Alipore by special messenger at the cost of the appellant.

14. With the aforesaid observations, FMA 1351 of 2022 is disposed of. Consequently, all connected pending applications, if any, are also disposed of.

15. There shall be no order as to costs.

16. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)