

29 23.08.23

Ct. No. 04

akd

S.A.T. 77 of 2023
CAN 1 of 2023

Munshi Nurul Islam
Vs.
Kripamoy Pal & Ors.

Mr. Partha Pratim Roy,
Ms. Nafisa Begum.

... for the appellant.

Mr. Sibasis Ghosh,
Mr. Dwarika Nath Mukherjee.

... for the respondents.

The instant appeal shall be heard on the following substantial question of law:

Whether the document, which was exhibited at the behest of the plaintiff/appellant even at the stage of ex parte, cannot be considered to have been duly exhibited after the ex parte decree is set aside and it is imperative on the part of the plaintiff to re-tender the said document to be received in evidence by exhibiting the same again?

Re: CAN 1 of 2023

This is an application at the behest of the plaintiff/appellant seeking an order of injunction restraining the respondents from making any obstruction to the plaintiff in respect of the suit property till the disposal of the instant appeal.

It is alleged in paragraph 9 of the said application that if the respondents are not restrained from making any obstruction to the plaintiff's constructed boundary wall, it would cause irreparable loss and injury.

Both the Courts below have concurrently held that the appellant is not in possession of the suit premises, even some of the witnesses cited by the

plaintiff categorically deposed that the defendants/respondents are cultivating the land and possessing the same since many years. Furthermore in addition to the declaration of title and permanent injunction the prayer for recovery of possession is also sought for, which implies that the appellant is not in possession of the suit property.

In view of the above, the manner in which the injunction is sought cannot be granted.

Accordingly the application being CAN 1 of 2023 is dismissed.

Re: Appeal

Let the Lower Court Records be called for through special messenger at the cost of the appellant. Such cost shall be put in by 29th August, 2023.

In the event of deposit of the special messenger cost, the office shall ensure that the Lower Court Records arrives to this Court within three weeks from date.

Immediately, after arrival of the Lower Court Records, office shall examine the same and if found complete shall put an endorsement thereupon; and serve a notice of arrival of records on the learned Advocate on record of the appellant under Rule 12 of Chapter IX of the Appellate Side Rules.

The appellant is directed to prepare and file eight copies of informal paper books – printed, typewritten or cyclostyled, as the case may be – out of court, within a period of four weeks from date.

All other formalities relating to preparation of paper books are dispensed with.

The defendants/respondents have entered appearance by lodging a caveat bearing no. 1702 of 2023 on 3rd May, 2023.

It is submitted by the learned Advocate for the respondents that the Vakalatnama executed by the said respondents has been included in the said caveat, which may be treated as Vakalatnama filed in the instant appeal.

In view of the above, let the Vakalatnama annexed with the aforesaid caveat be detached therefrom and shall be tagged with the instant appeal. Accordingly, the appeal shall be treated ready as regards service.

After arrival of the Lower Court Records and having found complete and filing of the paper books the office shall put an endorsement that the appeal is ready for hearing.

Liberty is granted to the respective parties to pray for early listing of the instant appeal.

(Harish Tandon, J.)

(Ajay Kumar Gupta, J.)