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SK
Ct. No. 18
06.05.2022

S.A.T. No. 131 of 2020
I.A. No : CAN 1 of 2021
CAN 2 of 2022

Sk. Abdul Alim
Vs.
Sri Tarak Das & Ors.

Mr. Buddhadeb Ghosal,
Md. Younush Mondal ... For the appellant/applicant.

Mr. Gopal Chandra Ghosh,
Mr. Prasanta Bishal ... For the respondents.

Re : I.A. No : CAN 2 of 2022

This is an application for occupation charges filed by the respondents.

The applicants are the plaintiffs of the suit out of which the present Second Appeal arises. The applicants in the said suit prayed eviction of the appellant from the suit property on the ground that he is a trespasser therein.

The Trial Court decreed the suit but the Appeal Court below reversed it. The appellate decree is under challenge in the present second appeal.

Mr. Buddhadeb Ghosal, learned counsel appearing on behalf of the appellant submits that the Appeal Court below has dismissed the suit only on the ground that in view of the decision of Title Suit No. 24 of 1997, the suit is barred by principle of *res judicata* but findings of the learned Trial Judge regarding the ownership of the applicants over the suit property vis-

à-vis the status of the appellant therein have not been disturbed, moreover the present appeal has been admitted only on the substantial questions of law, whether the Appeal Court below was right in holding that the suit was barred by the principle of *res judicata*, as such pending disposal of the present second appeal, the appellant cannot enjoy the suit property without payment of occupational charges.

Mr. Gopal Chandra Ghosh, learned counsel appearing for the respondents/opposite parties on the other hand submits that so long the right, title interest of the parties over the suit property are not finally decided, the appellant is not obliged to pay any occupational charges for his occupation over the suit property.

Heard learned counsel for the parties, perused the materials-on-record.

The Appeal Court below has set aside the entire judgment and decree of the learned Trial Judge, therefore I am unable to accept the contention of Mr. Ghosal, that in spite of the suit being dismissed by the appeal Court below, the findings of the learned Trial Judge regarding the right, title interest of the parties in respect of the suit property remain.

Moreover, the correctness of the finding of the Appeal Court below that appellant once decided to have a title over the suit property cannot be held to be a trespasser therein, is required to be investigated in

the present appeal and pending such investigation, prayer of the respondents to put the appellant under a condition of payment of occupational charges to enjoy the possession of the suit property is misconceived.

The application being Re: I.A. No: CAN 2 of 2022 is dismissed without any order as to costs.

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To expedite the hearing of the appeal the Lower Court Records be called for by Special Messenger at the costs of the appellant, such costs be put in within a week from date.

The appellant is at liberty to prepare requisite number of paper books without certificate and without comparing with that of the original record, a copy of such paper book be served upon the learned advocate for the respondents.

Liberty to mention for early hearing.

(Biswajit Basu, J.)