

Bijay Kumar Agarwal Vs. Narayani Devi Agarwal and ors.

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Court : Kolkata

Decided On : Feb-16-2012

Judge : I. P. Mukerji

Appellant : Bijay Kumar Agarwal

Respondent : Narayani Devi Agarwal and ors.

Judgement :

GA No.341 of 2012 With CS No.61 of 2011 IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION ORIGINAL SIDE In the matter of:
Bijay Kumar Agarwal Versus Narayani Devi Agarwal & ORS.Before: The Honble
Justice I.P.MUKERJ.Date:

16. 02.2012 Appearance: Mr.Sumon Dutta, Adv.Mr.G.S.Gupta, Adv..for the
plaintiff.

Mr.Manju Agarwal, Adv.Mr.B.Manot, Adv., .

.for the defendant No.1.

Mr.S.K.Ghosh Adv..for the defendant No.3.

The Court: This is another application in a partition and administration suit.

The applicant is the plaintiff.

The grievance is restricted to 1/1, Jagmohan Mullick Lane, Kolkata 700007.

My attention is drawn to a judgment and order dated 6th June, 2011 passed by a Division Bench of our Court in APOT No.158 of 2011, GA No.1204 of 2011, CS No.61 of 2011 (Bijay Kumar Agarwal versus Narayani Devi Agarwal & Ors.) By that judgment and order the Honble Appeal Court had disposed of an appeal preferred from an order of the learned Trial Judge 2 refusing to pass an order of injunction regarding the properties which are the subject matter of this partition suit.

The material part of the order of the Honble Appeal Court is inserted below: Regarding the other two properties, we pass an order of injunction restraining all the parties from making any addition, alteration or changing the nature and character of the same or transferring or alienating any portion thereof or encumbering the property except with the leave of the Court.

The parties are directed to disclose the names of the tenants and the rent payable by them in respect of those properties within a week from today before the Learned Single Judge.

I see this application as one for implementation of that judgment and order.

It is alleged on behalf of the plaintiff that the list of tenants of the above property furnished by the second defendant pursuant to the said order is very vague.

An appropriate list with the names of tenants, the area occupied by each, the rent being paid and the vacant area if any in the property is called for.

The plaintiff apprehends that without such list, the defendants could make the said order of the Honble Appeal Court infructuous by showing their chosen persons to be occupying the vacant spaces and then parting with them.

In spite of notice the second defendant does not appear.

The other defendants are represented.

3 Prima facie, I am of the opinion that when the Honble Appeal Court did not appoint a Receiver or a Special officer over the property, this Court should not, at this stage appoint a Special Officer or Receiver, as prayed for by Mr.Dutta appearing for the plaintiff.

However, the interest of the plaintiff has also to be secured.

I think the ends of justice will be subserved if the second defendant or in his absence the fiRs.defendant furnishes the list of tenants with all details mentioned above to the Advocate-on-Record for the plaintiff within ten days from date.

The plaintiff or his Advocate on Record will be at liberty to inspect the property 1/1, Jagmohan Mullick Lane, Kolkata 700007 upon notice to the Advocates-on-Record for the defendants.

The defendants will render cooperation in such inspection.

This application is disposed of.

As no affidavits have been called the allegations made in the petition are deemed not to be admitted.

Disposal of this application will not preclude the plaintiff from applying for appointment of a Receiver over the property and for consequential reliefs if such an application is warranted by the disclosure in the list or failure to make any disclosure in the list referred to above.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(I.P.MUKERJI, J.) SP/

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