

10 15.7.19
gc Ct. No. 1

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

**CAN 1 of 2019
In
FMA 5 of 2019**

**Smt. Chhabi Rani Saha @ Chhabi Saha & Anr.
-Versus-
Smt. Silpi Saha**

**Mr. Ajoy Kumar Singhania
Mr. Anirban Banerjee**

...For the Appellants.

This appeal is directed against the refusal to pass an ex parte ad interim order of injunction in the partition suit. The earlier Bench admitting the appeal has by an injunction order dated 26th June, 2019 restrained the respondent from changing the nature and character of the suit property for a period of six weeks from the date of the said order.

We have heard the learned Counsel for the parties in the partition suit. Unless the shares are declared, in our view, every co-sharer has an interest in every portion of the property in question and it is the duty of the Court to ensure that the interests of the parties are not affected during the pendency of the partition suit.

In view of the aforesaid, we continue the interim order passed by the earlier Division Bench till the disposal of the injunction application.

It is submitted on behalf of the respondent that taking advantage of this order, the plaintiff is trying to create disturbance in the business of puffed rice situated in the property mentioned in Item No.2 of the Schedule of the properties mentioned in the plaint. The order of injunction, however, does not extend to such running of the factory. However, we are not unmindful of the fact that in the event it is contended and held that the said factory also belongs to the joint family or that the plaintiff is entitled to a share of profits of the said business, the defendant cannot unilaterally appropriate all the usufructs and benefits of the said business. Accordingly, we direct the defendant to furnish monthly statement of accounts from June, 2019 to the plaintiff and also to file such statement in the pending proceeding subject to any order that may be passed by the learned Single Judge before whom the proceeding is pending. This order is purely temporary in nature and would be co-terminus with the final order that may be passed by the learned Court in the pending proceeding.

The opposite party/respondent shall file an affidavit-in-opposition within two weeks, reply thereto, if any, shall be filed within a fortnight thereafter. We request the learned Trial Judge to dispose of the injunction

application uninfluenced by any observation made by us in this order as expeditiously as possible and preferably within a period of 12 weeks after the completion of affidavits. The directions for filing affidavits are peremptory.

We make it clear that the learned Trial Judge shall decide the matter on merits and our findings are, prima facie, in nature.

The appeal being FMA 5 of 2019 and the application being CAN 1 of 2019 are disposed of.

(Soumen Sen, J.)

(Ravi Krishan Kapur, J.)