

**FMAT 396 of 2021
CAN 1 of 2021**

**Mrinal Kanti Bandyopadhyay & Ors.
vs.
Bikash Bandyopadhyay & Ors.**

Mr Prabal Mukherjee, Sr. adv.
Ms. Shaoni Dey
..... for the appellants
Mr. Shiladitya Barma
..... for respondent nos. 15 to 17
Mr. Asit Kr. Bhattacharya
Mr. K R. Chatterjee
..... for respondent nos. 18, 19, 22 and 23

Learned senior counsel for the appellants assails the order dated 7.6.2021 in Title Suit no 75 of 2021 refusing the ad interim order of injunction in a partition suit. He contends that the original defendants nos. 15 to 17 have transferred their shares to defendants nos. 18 to 23. Apprehending further transfers resulting in multiplicity of proceedings with regard to the suit property and additional constructions being made thereon prejudicing the rights and interest of the plaintiff, an ad interim order was sought for. It is contended the trial court failed to consider reliable documents and refused such prayer.

On the other hand, learned counsel appearing for the defendants/respondents denies and disputes such allegations. It is submitted that no case of extreme urgency or immediate apprehension was made out in the facts of the case justifying an ad interim order.

Scope of interference in an ex parte ad interim order of injunction is very limited. However, the present suit is

one of partition. Admittedly the appellant is a co-sharer in the suit property. Some of the defendants have already transferred their shares to others who had made co-defendants in the matter. Thus, the apprehension of further transfers cannot be wholly ruled out.

Such transfers would lead to delay and multiplicity of proceedings. Moreover, any change of nature and character of the property pending the suit may adversely affect the right and interest of the parties while partitioning property by metes and bounds during final disposal of the suit.

In view of the aforesaid facts, we are inclined to direct that the defendants/respondents shall not alienate the suit property nor would they change the nature and character of the said suit property without the leave of the court till disposal of the injunction application.

We further direct the defendants/respondents to file their written objections to the injunction application within fortnight from date and the court below is requested to dispose of the injunction application preferably within three months from the date of communication of this order without unnecessary delay.

With the above directions, appeal is disposed of.

It is made clear that observations made by this court are tentative in nature and shall not have any binding effect upon the court below during the hearing of the injunction application.

Connected application if any, also stands disposed of.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)