

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

21.12.2021
Item No.7
Crt. No.11.
KB

**FMAT 531 of 2021
with
IA No. CAN 1 of 2021**

**Baidyanath Garai & Anr.
Vs.
Nirmal Kumar Gupta & Ors.**

(Via Video Conference)

Mr. Sounak Bhattacharya
Mr. Sounak Mandal
... For the appellants.

Under challenge in this appeal is the order dated 21st August, 2021 passed by the Learned Civil Court (Senior Division), Bishnupur, District – Bankura refusing the prayer of ad-interim injunction of the plaintiffs in a suit for declaration of share, partition and injunction numbered as T.S. 41 of 2021.

Mr. Sounak Bhattacharya, Learned Counsel with Mr. Sounak Mandal, Learned Advocate, appears for the present appellants/plaintiffs.

The attention of this Court is drawn to the part of the order impugned dated 21st August, 2021 whereby the Learned Trial Court, upon perusal of the Deeds of Purchase produced by the plaintiffs of their purchase of portions of the suit property, as well as the the R. S.

Record of Rights (*RSROR*), recognised that the plaintiffs are co-sharers in the undivided suit property.

The attention of this Court is also drawn to the discussion by the Learned Trial Court to the effect that since the plaintiffs did not disclose the manner in which the defendants were trying to change the nature and character of the suit property, there is no requirement of restraining the alienation of the suit property during pendency of the suit by a *bona fide* co-sharer in favour of any outsider.

To the mind of this Court, the reasoning offered by the Learned Trial Court appears to be foundationally flawed and contradictory.

It is the essence of a partition suit that the suit property be preserved unaltered till it is formally partitioned between/among its co-sharers.

Learned Counsel for the appellant submits that the manner of transfer by the defendants has been specifically alleged at *paragraphs 4 and 5* of the Injunction Application, a fact which has gone unnoticed by the Learned Trial Court.

Accordingly, there shall be a *status quo* with regard to the nature, character and possession of the suit property until the application for injunction is finally decided by the Learned Trial Court.

It requires no emphasis, that without being persuaded by this order, the Learned Trial Court shall be free to decide the injunction application on contest on its own merits.

This Court is informed that no caveat has been lodged.

The Learned Trial Court is requested to expedite the hearing of this appeal, subject to its board.

Both **FMAT 531 of 2021** and application being **IA No. CAN 1 of 2021** stand accordingly **disposed of**.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)