

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

15.12.2021
Item No.10
Court No. 01
sg

**FMAT 16 of 2020
CAN 1 of 2021**

Sri Dilip Kumar Agarwal
Versus
Smt. Sabitri Devi Agarwal & Ors.

Mr. Milindo Paul, Adv.
Mr. Nabakumar Paul, Adv.
Ms. Dedashruti Bose, Adv.
...for the petitioner

Mr. Aayush Mitruka, Adv.
Mr. Suresh Kr. Mitruka, Adv.
...for the respondent nos. 4&5

This appeal is admitted.

The appeal is arising out of an order dated 17th
September, 2019 refusing to pass ad-interim order of
injunction in a partition suit.

It appears from record that the original plaint
was amended pursuant to an order dated 13th
September, 2019 (erroneously recorded as '13th
September, 2018'). The learned Trial Court refused to
pass ad-interim order on the ground that the plaintiff
has failed to file all the documents of title in respect of
the suit property, inasmuch as, no record of right has
been filed by the plaintiff before the learned Trial
Court. The learned Trial Court was of the opinion that
the documents are insufficient for making out a good

prima facie case in favour of the plaintiff.

The learned counsel for the appellant has argued that it is a partition suit and irrespective of the fact that whether the plaintiff is able to produce documents to show title over all of the properties, protective order could have been granted in favour of the plaintiff in respect of such properties which would establish jointness.

The learned counsel for the respondent no. 4 and 5 supports the case of the plaintiff.

Ordinarily, in a suit for partition, ad-interim order of injunction is a rule and refusal is an exception as because all the co-sharers have right over every inch of the property forming the subject matter of the suit. However, it runs with the rider that the jointness has to be prima facie established before the Court has invited to exercise its discretionary and equitable jurisdiction. The learned Trial Court, on examination of the documents, was prima facie of the view, that in absence of some documents, no order of injunction can be granted in favour of the plaintiff. It prima facie appears that the plaintiff had failed to produce all the documents in support of his title. We are not sure whether such application was filed after the plaint was amended. However, as the case may be, we feel that, by passage of time, it would not be prudent, at this stage, to pass any ad-interim order

save and except we make the observation that any transfer or alienation of the suit properties may hit by the doctrine of *lis pendens*.

We feel that the injunction application should be heard and disposed of by the learned Trial Court as expeditiously as possible.

We have been informed by the learned counsel representing the appellant that the pleadings in respect of the injunction application are complete. In view thereof, we request the learned Civil Judge (Senior Division), Siliguri to dispose of the injunction application on merits within a period of six weeks from the date of communication of this order without granting any adjournments to either of the parties unless it is unavoidable.

We also request the learned Judge to expedite the hearing of the suit by giving peremptory direction with regard to procedural matters and thereafter to proceed with the suit.

We make it clear that the observation made in this order shall not influence the learned Trial Judge to decide the injunction application on merits.

We further clarify that we did not exercise our discretion for the reasons we have recorded and it is not on merits on which the learned Trial Judge shall be required to decide at the final stage.

FMAT 16 of 2020 and the connected application,

being CAN 1 of 2021 are accordingly disposed of.

The copy of this order shall be immediately communicated to the Court below.

Urgent photostat certified copy of this order, if applied for, be supplied to be parties upon compliance of all requisite formalities.

(Biswajit Basu, J.)

(Soumen Sen, J.)