

**FMA 765 of 2022**  
**with**  
**IA No. CAN 1 of 2018 (Old No. CAN 1760 of 2018)**  
**with**  
**IA No. CAN 2 of 2019 (Old No. CAN 2827 of 2019)**

(Dilip Adhikary Vs. Kaleshwari Adhikari & Ors.)

**Mr. Avishek Prasad**  
**Ms. Sreetama Neogi**

**..... For the appellant**

**Dr. Indrajit Mondal**

**..... For the respondent**  
**nos. 1 to 13**

The present appeal has been preferred challenging the order no. 17 dated 6<sup>th</sup> November, 2017 passed by the learned Civil Judge (Senior Division) at Malda in a partition suit being P.S. No. 253 of 2015. By the said order the learned Civil Judge was pleased to dispose of the injunction application filed by the plaintiffs under Order 39 Rule 1 read with Section 151 of the Code of Civil Procedure directing the parties to maintain *status quo* with regard to the nature, character and possession of the suit property till disposal of the suit.

Records reveal that the present appeal was admitted by an order passed by a co-ordinate Bench of this Court on 24<sup>th</sup> August, 2018 observing, *inter alia*, that '*prima facie, the order is such that it has no distinctive features as to what were the respective cases run by the rival parties and could be used for recording disposal of any*

*application for temporary injunction filed in a suit for partition'.*

Mr. Prasad, learned advocate appearing for the appellant/defendant no. 12 submits that the order impugned is a non-speaking one and it would appear that the same had been passed in consideration of the fact that the suit was for partition. The observation that no prejudice would be caused to either of the parties if they are directed to maintain *status quo* also does not stand fortified with reasons.

According to Mr. Prasad, no *prima facie* case has been made out by the plaintiffs warranting issuance of the impugned order. A blanket order of *status quo* had been mechanically passed without considering the specific defence raised by the appellant in his written objection.

He submits that the plaintiffs approached the learned Court below suppressing the fact that pertaining to the self-same suit property previously a partition suit was filed in the year 1967 being P.S. No. 126 of 1967 which was disposed of by a compromise decree dated 21<sup>st</sup> December, 1967. On the basis of the said compromise decree, the suit property was partitioned by metes and bounds. Having thus approached the learned Court below unclean hands, the plaintiffs were not entitled to the interim injunction.

Drawing our attention to the averments made in the written objection filed by the appellant to the injunction

application as well as the averments made in the stay application, Mr. Prasad submits that P.S. No. 126 of 1967 was amongst the two sons, namely, Gayanath Adhikary, Batasu Adhikari and two daughters, namely, Fulta Bala Dasi and Kamini Bala Dasi, all being the heirs of the original owner, namely, Buddhu Mandal. About 48 years thereafter the plaintiffs/opposite party nos. 1 to 16, being the descendants of Fulta Bala Dasi and Kamini Bala Dasi, preferred the partition suit being P.S. No. 253 of 2015 *inter alia*, praying for a preliminary decree claiming half share in the schedule property. However, in paragraph 6 of the plaint, it has *inter alia* been stated that the defendants were attempting to forcibly occupy dag nos. 63 and 64 under Mouza – Palasdanga. But as per the compromise decree the said plots had been allotted to the defendants. In view of such contradictions, the learned Court below ought not to have exercised discretion in favour of the plaintiffs.

Dr. Mondal, learned advocate appearing for the opposite party nos. 1 to 13 denies the contention of the appellant and submits that there are sufficient materials on record to infer that the appellant is attempting to obtain forcible possession of the concerned plots including the bank of plot nos. 63 and 64 of Mouza – Palashdanga. The bank of the concerned plots are in joint possession of all co-sharers and the co-sharers are also paying rent in respect of the said portion of land.

He argues that the order impugned in the present appeal does not suffer from any infirmity since considering the nature of the suit and upon arriving at a finding that no prejudice would be caused to the parties, the order of *status quo* was passed. The properties of Buddhu Mandal are still joint and there has been no physical partition and the restraining order, as passed, would not cause a greater loss and prejudice to the appellant than the loss and prejudice, the absence thereof, is likely to be caused to the defendants.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

While granting an interim order of temporary injunction, the Court is required to see whether there exists a *prima facie* case, whether the balance of convenience or inconvenience tilts in favour of the applicant seeking the interim order and whether the denial of the interim protection would cause irreparable loss and injury which cannot be compensated by payment of money. The order impugned has been passed only on the ground that the suit was for partition.

We are unable to accept the contention of Dr. Mondal that a *prima facie* case has been made out by the plaintiffs to obtain the interim order. There had been a suppression of the fact that about 48 years ago the property involved in the present suit was also the subject matter of a partition suit being P.S. No. 126 of 1967

which was disposed of by a compromise decree on 21<sup>st</sup> December, 1967. Admittedly, the said compromise decree had also not been challenged by either of the parties.

The averments made in the plaint, written objection and the written statement reveal that the plaintiffs are claiming certain plots of land including the plot nos. 63 and 64 of Mouza – Palashdanga which do not form part of the allotment of Budhu Mandal's daughters, namely, Fulta Bala Dasi and Kamini Bala Dasi.

In the said conspectus and as the doctrine of *lis pendens* can take care of interim variations, we are of the opinion that there was no justification in passing the order impugned and that too, without reasons.

Accordingly, the order impugned in the present appeal being order no. 17 on 6<sup>th</sup> November, 2017 passed by the learned Judge in P.S. No. 253 of 2015 is set aside.

As the partition suit is pending since the year 2015, the learned Court below is requested to take expeditious steps towards disposal of the suit, without granting any unnecessary adjournments to either of the parties.

With the above observations and directions, the appeal and the connected applications are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

**(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)**