

09 **20.11.
2023**

Ct. No. 04

Ab

**FMA 173 of 2023
IA No. CAN 1 of 2023**

**Sabir Sekh
Vs.
Ujran Nesa Bibi and others.**

**Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Abhirup Halder,
Mr. Anirban Saha Roy.
... for the appellant.**

**Mr. Pinaki Ranjan Mitra.
... for the respondents.**

The instant appeal arises from an order dated 3rd January 2023 passed by the learned Civil Judge (Senior Division), 1st Court at Howrah in Title Suit No. 761 of 2021 by which an application for temporary injunction filed by the plaintiff/appellant is rejected on contest.

The plaintiff/appellant filed a suit for partition and separation of shares and claiming an undivided right, title and interest in respect of the subject matter on the strength of a deed of gift executed by his predecessor. The contesting defendants/respondents denied the title acquired by the plaintiff/appellant in respect of the property in question and also disclosed the fact that earlier a Title Suit being no. 16855 of 2015 was filed by the several persons including the donor against the plaintiff/appellant challenging the deed of gift executed in favour of the plaintiff/appellant in respect of the suit property, which was ultimately dismissed for default on 31st August 2016.

It is arduously submitted by the contesting defendants/respondents that the factum of dismissal of the said suit for default has been grossly suppressed in the plaint as well as in the injunction application, which disentitled the plaintiff/appellant to get the order of temporary injunction. It further appears from the record

that another suit being Title Suit No. 113 of 2015 instituted by the contesting defendants/respondents against the plaintiff/appellant was decreed *ex parte*, which fact has also been suppressed in the plaint as well as in the application for temporary injunction.

So far as the second suit is concerned, it is a specific stand of the plaintiff/appellant that since the said suit was decreed *ex parte* without service of summons, the plaintiff/appellant had no knowledge of the same, but there is no explanation offered for non-disclosure of the another suit, which was dismissed for default on 31st August 2016.

A point is raised in the instant appeal that while deciding an application for temporary injunction, the Trial Court has virtually proceeded to decide the matter finally and there is nothing left to be decided after full-fledged trial.

We had an occasion to peruse the findings returned in the impugned order and find that certain observations have the flavour of final adjudication, which ought not to have been done at the time of disposing of an application for temporary injunction. We are conscious and aware of the settled proposition of law that the findings made on an application for temporary injunction are merely tentative and *prima facie* in nature having no impact and persuasive effect at the time of deciding the issues involved in the suit after full-fledged trial. The Court should forbear from making any observations at the time of deciding an interlocutory application, which had an impact on the final adjudication.

So far as the title as claimed by the plaintiff/appellant in respect of the said property is concerned, is a matter trial to be decided upon permitting the parties to adduce evidence and, therefore, the observations in this regard in the impugned order are mere *prima facie* and tentative and shall not have any persuasive effect at the time of final adjudication.

It is no longer *res integra* that the Court while deciding an application for temporary injunction is exercising the discretionary as well as equitable jurisdiction. The suppression of material facts is one of the important factors, which may disentitle the plaintiff/appellant to get an order of injunction.

The suit, which was instituted against the plaintiff/appellant, ultimately resulted into dismissed for default being the material facts has been suppressed in the plaint as well as in the application for temporary injunction and, therefore, we do not find any infirmity and/or illegality in the order of the Trial Court in rejecting the application for temporary injunction.

Before parting with the ultimate conclusion as arrived herein above, it is to be noted that the Court should not be confused between the prima facie title and the prima facie case. The Court while considering the application for temporary injunction shall confine its consideration on the prima facie case and should not make a roving enquiry to find out the prima facie title.

Be that as it may, since we have already observed that the findings on the title are mere tentative in nature, we do not delve to go deep into the aforesaid aspect.

The appeal and the connected application being CAN 1 of 2023 are disposed of.

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

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

