

30.08.2023

Court : 04
Item : 08
Matter : FMAT
Status : DO
Bench ID : 266048
Transcriber : NANDY

FMAT 110 of 2023
with
CAN 1 of 2023

Anima Saha & Ors.
Vs.
Udayan Saha & Anr.

Mr. Anirban Bose, Advocate
Mr. Satyajit Senapati, , Advocate

.....for the Appellants

1. The Court should not pass an ad interim order or an order of temporary injunction on mere drop of the hat. The Court must record the existence of a prima facie case, balance of convenience and inconvenience, irreparable loss and injury before proceeding to pass an order of injunction. Merely because the counterclaim is filed challenging the deed of gift executed by the father in favour of the plaintiff/respondent, which is duly registered in the office, on the ground of undue influence cannot be a sole criteria for passing an order of injunction either restraining the plaintiffs from alienating, transferring or disposing of the said property comprised in the said deed of gift nor from changing the nature and character thereof.
2. It appears that the Trial Court refused to pass an ad interim order of injunction without giving an opportunity to the plaintiff to deal with the allegations made therein which does not appear to us, require any interference in the instant appeal. However, we feel that justice would be subserved if the said application is disposed of finally.
3. Before we pass a direction for exchange of affidavits, for the purpose of record, it is made clear that an application for temporary injunction filed by the

plaintiff, is still pending and an ad interim order of injunction restraining the present appellant from transferring, alienating and/or disposing of the undivided property in favour of a third party and also from changing the nature and character has been passed.

4. Be that as it may, we feel that the plaintiff/respondent should be given an opportunity to disclose his stand in relation to an allegation made in the application for temporary injunction filed by the appellants.
5. Accordingly, we direct the plaintiff/respondent to file the affidavit-in-opposition to application for temporary injunction filed by the appellants within two weeks from the date of communication of this order. Reply thereto, if any, shall be filed by the appellant within two weeks therefrom.
6. The Trial Court is directed to dispose of both the applications for temporary injunction within two weeks from the date of expiration of period for exchange of affidavits.
7. It goes without saying that none of the observations made hereinabove shall have any persuasive effect at the time disposal of the aforesaid applications.
8. With these observations the appeal being **FMAT 110 of 2023** and the connected application being **CAN 1 of 2023** are **disposed of**.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

