

29      **07.07.**  
**2023**  
  
Ct. No. 04  
  
ab

**FMAT 129 of 2023**  
**IA No. CAN 1 of 2023**

**Rabindra Kumar Singh**  
**Vs.**  
**Shankar Singh and others.**

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**Mr. Kamlesh Jha,**  
**Mr. Biswajit Tiwari.**

**... for the appellant.**

Despite service there is no representation on behalf of the respondents.

We indicated in the order dated 12<sup>th</sup> June 2023 that the appeal will be disposed of at the admission stage as the point involved in the instant appeal is a question of law, which does not require the documents or the pleadings to be gone into in details.

A prayer for *ex parte* ad interim order of injunction is refused by the trial court by passing the impugned order and simultaneously returning the plaint to be presented before the appropriate court. It is a suit for partition, which includes several properties, some of which are situated within the jurisdiction of the court and some outside. The trial court has held that since some of the properties are beyond the territorial jurisdiction of the said court, therefore, it has no jurisdiction to entertain the suit in this regard.

The trial court overlooked the provisions contained under Section 16 and Section 17 of the Code of Civil Procedure. Section 16 postulates that subject to the pecuniary and other limitations prescribed by any law, the suit for partition of the immovable property shall be instituted in the court within the local limits of jurisdiction the property is situated. However, Section 17 of the Code appears to be an exception in this regard

where the suit for obtaining reliefs respecting immovable property situated within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situated.

In a suit for partition in relation to different properties situated within the territorial jurisdiction of different courts cannot be held to be non-maintainable as some of the portions of the property are within the territorial jurisdiction of the said court despite the fact that the other portions are beyond the territorial jurisdiction of the said court.

The trial court ought not to have taken recourse to Order VII Rule 10 of the Code at the stage of *ex parte* ad interim order of injunction ignoring the provisions of Section 17 of the Code.

The order, therefore, is not sustainable and the same is hereby set aside.

However, liberty is granted to the appellant to renew the prayer of *ex parte* ad interim order of injunction before the trial court, which shall be decided on merit.

With these observations, 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.)**

**(Prasenjit Biswas, J.)**

