

**IN THE HIGH COURT AT CALCUTTA  
Circuit Bench at Jalpaiguri**

**FMAT 21 of 2023  
CAN 1 of 2023  
CAN 3 of 2023**

**Smt Kamana Roy & Anr.  
vs.  
Sri Upendra Nath Roy & Anr.**

**Mr. Nabakumar Paul  
Mr. Satyaki Basu  
..... For the appellants**

1. The appellants have assailed order dated 18.05.2023 passed by the Learned Civil Judge, (Senior Division), Cooch Behar in Title Suit No. 56 of 2023 refusing prayer for ad-interim injunction in the suit for partition.
2. Affidavit of Service filed by the appellants be kept with the record.
3. We have heard the learned counsel of the appellants. The grievance of the appellants is that the suit property originally belonged to one Nagendra Nath Roy, the father of the present two appellants and the respondent No. 1, and after demise of their father all of them had become joint owners of the suit property left by the said Nagendra Nath Roy. The Respondent No. 1 being the brother of the present appellants has recorded his name in the relevant

records of rights showing himself as absolute owner of the suit property illegally. The appellants have filed a title suit for partition of such undivided joint properties and in the said proceedings the appellants had prayed for an order of ad-interim injunction coupled with a prayer for temporary injunction for restraining the respondent No. 1 herein from making construction or transferring/alienating the property in favour of any third party. But the Learned Trial Court has refused to grant any ad-interim injunction in favour of the present appellants and being aggrieved the instant appeal being FMAT No. 21 of 2023 has been filed challenging the said refusal order dated 18.05.2023 passed by the Learned Civil Judge, (Senior Division), Cooch Behar in Title Suit No. 56 of 2023 along with an application for injunction being CAN 01 of 2023.

4. We have gone through the relevant materials on record and it prima facie appears that the suit property is a joint and undivided property in which the present appellants have undivided share along with the respondent No. 1. The respondent No. 1 has not contested the matter in spite of receipt of notice, and as such the appellants have been able to make out a prima facie case in their favour, and the balance of convenience and inconvenience is also tilted in

their favour. There is a chance of causing irreparable loss and injury, if the prayer for injunction is refused.

5. As the respondent No. 1 has recorded his name in the R.O.R as owner of the suit properties, the apprehension of the appellants that the respondent No.1 may create third party interest over the suit property claiming himself as sole owner cannot be said to be imaginary. Further as the matter has arisen from refusal of ad-interim order, no useful purpose will be served by keeping the appeal pending, and accordingly we propose to dispose of the present appeal and connected applications by giving following directions.

6. The respondent No. 1 is hereby restrained from transferring or alienating the suit property or any part of such property claiming to be the absolute owner of the same till the disposal of the temporary injunction petition pending before the Learned Court of Civil Judge, (Senior Division), Cooch Behar in Title Suit No. 56 of 2023. Neither of the parties therein shall claim any equity over any action taken by them in respect of the suit property. The order dated 18.05.2023 passed in Title Suit No. 56 of 2023 of Civil Judge (Senior Division) Cooch Behar is hereby set aside.

7. Accordingly, the instant appeal along with all connected applications are hereby disposed of.

8. A copy of this order sheet be sent to the Learned Court for information and necessary action.

9. Urgent Photostat copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Apurba Sinha Ray, J.)**

**(Joymalya Bagchi, J.)**