

20.08.2024.
Item No. 45.
Court No. 1
ap

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION
(Appellate Side)

F.M.A.T. No.13 of 2024
With
I.A. No. CAN 1 of 2024

Smt. Madhuchhanda Dhar
Versus
Sri Nitai Roy & Ors.

Mr. Bikramaditya Ghosh,
Mr. Deborshi Dhar,
Mr. Bapi Sarkar,
Mr. Chayan Moni Bhowal.

...For the appellant.

1. The instant appeal is directed against an order dated 13th August, 2024 passed by the learned Civil Judge (Senior Division) at Siliguri in Title Suit No. 112 of 2024.
2. By the impugned order, the Court below refused ad interim injunction under Order 39, Rules 1 and 2 of the Code of Civil Procedure.
3. The suit is admittedly one for specific performance of unregistered agreement for sale of immovable property of the appellant. After execution of the agreement, the appellant found that the property was encumbered with some litigation.
4. A Power of Attorney was executed in favour of a third party. The appellant being exasperated,

demanding the property be conveyed on as is whatever there is basis to him.

5. On the respondents' refusing to comply with either requisition, the suit was filed for specific performance.

6. This Court is of the view that the reasoning given by the learned Trial Judge at an ad interim stage, cannot be seriously looked into by the High Court in the first appeal.

7. The reason therefor is that the Court below only wanted to hear the respondents after notice, the prayer for injunction has not yet been refused since the application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 was heard on contest.

8. This Court is, therefore, of the view that the Court below may hear out the application for injunction after due notice to the respondents. The respondents may be allowed to file the written objection to the plaintiff's application.

9. Since the order impugned herein is unlikely to prejudice the respondents, notice to them is not deemed necessary.

10. It is expected that the said application is heard out and disposed of finally within a period of two months from the date of communication of a copy of this order.

11. With the aforesaid observations, the instant appeal shall stand disposed of.

12. In view of disposal of the appeal itself, the connected application being CAN 1 of 2024 shall stand disposed of.

13. There will be no order as to costs.

14. The appellant and the Registry of this Court shall communicate this order to the Court below and the respondents by hand, e-mail and/or whatsapp.

15. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajoy Kumar Mukherjee, J.)