

D/L.23.
January 21, 2025.
MNS.

FMAT No. 29 of 2025

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CAN 1 of 2025

Pradip Kumar Ganeriwala

Vs.

Rohan Ganeriwala and others

Mr. Rajeev Kumar Jain,
Mr. Kunal Shaw,
Ms. Yamini Mahawar

... for the appellant.

Mr. Siddhartha Chatterjee,
Mr. Shameek Ray,
Mr. Abil Lal Ghosh,
Mr. Niket Ojha

...for the respondent no. 1.

Mr. Siddhartha Banerjee,
Mr. Joydip Das

...for the respondent no. 5.

Mr. Rachit Lakhmani,
Mr. Chhandak Dutta

...for the respondent no. 18.

Mr. Bratin Kumar Dey,
Ms. Anjana Banerjee

...for the respondent nos. 20, 21 & 22.

1. The present challenge has been preferred against an order whereby the present appellant (defendant no. 2 in a suit for declaration challenging a registered deed of partition) was directed to serve copies of the written objection filed by him to the injunction application on defendant nos. 20, 21 and 22.

2. Learned counsel for the appellant argues that since the learned trial Judge proceeded on a fundamental misconception that the suit is one for partition; whereas the suit has been filed for declaration challenging a registered partition deed, the entire premise of the order is bad in law.

3. It is further submitted that since the written objection of the defendant no.2/appellant was to an application for injunction filed by the plaintiff, the present defendant no. 2/appellant does not have any obligation to serve notice thereof on the other defendants.

4. Learned counsel also refers to the chequered history of the matter.

5. A partition suit was filed previously, where the present defendant no. 2/appellant took a defence that there was a previous, though till then unregistered, deed of family settlement whereby all the parties were allocated their respective shares, which was acted upon. During pendency of such suit, the previous deed was registered. Such registration prompted the filing of the current suit challenging the same.

6. Learned counsel for the appellant places reliance on a judgment of a co-ordinate Bench passed in connection with a previous order of the same learned trial Judge whereby she had directed the defence of the present appellant to be struck off.

7. In the said order, the Division Bench had apparently made certain caustic remarks and had interfered with the said order in connection with an appeal.

8. Although learned counsel for the respective appearing respondents seek to make their submissions, we refuse such opportunity to the respondents in view of the respondents having no right of hearing at the stage of admission hearing under Order XLI Rule 11 of the Code of Civil Procedure.

9. Be that as it may, we find from the order that although the same was filed in connection with an injunction application while hearing the same, the order itself is not one passed under Order XXXIX Rule 1 or 2 of the Code of Civil Procedure, which are appealable under Order XLIII Rule 1(r) of the Code.

10. Thus, the remedy of the appellant, if any, lies by way of an appropriate challenge and not an appeal, since the order is not appealable in law.

11. Accordingly, FMAT No. 29 of 2025 is dismissed as not maintainable, with liberty to the appellant to approach appropriate Bench with a properly constituted challenge.

12. The connected applications are also disposed of accordingly.

13. It is made clear, however, that the merits of the contentions of either of the parties have not been gone into by this Court at all.

14. The learned Advocate-on-record for the appellant is granted liberty to take back the certified copy of the order

impugned annexed to the Memorandum of Appeal, upon
furnishing a photocopy thereof for the records.

15. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)