

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.M.A. 683 of 2025

IA No: CAN 3 of 2025

Goutam Paul @ Goutam Kumar Paul and another
Vs.
Sukanta Paul

For the appellants	:	Mr. Sourojit Dasgupta Mr. Akash Dutta Mrs. Sadhna Rao
For the respondent	:	Ms. Deblina Lahiri
Heard on	:	12.11.2025
Judgment on	:	12.11.2025

Sabyasachi Bhattacharyya, J.:-

1. Heard learned counsel for the parties on the appeal itself.

2. The present appeal arises out of a suit filed by the plaintiffs/appellants for declaration of their one-third share in respect of the suit property and for permanent injunction.
3. In the said suit, an application was filed by the plaintiffs/appellants praying for temporary and *ad interim* injunction restraining the defendant/respondent from disturbing the peaceful right, title, use, interest and enjoyment of the plaintiffs as co-owners of the suit property.
4. The learned Trial Judge refused to grant *ad interim* injunction on the ground that the land owners and the developer have not been impleaded in the suit.
5. Upon hearing the contention of the parties, we find it evident that the said ground was not a valid ground in the eye of law for refusing *ad interim* injunction, since in a suit of the present nature, the developer and the original land owners are not necessary parties.
6. However, we agree with the conclusion of the learned Trial Judge, although on different grounds than that attributed in the impugned order.
7. The claim of title of the plaintiffs/appellants in respect of the suit shop room no. 25 is through a gift deed executed by their mother in their favour. The mother purchased the property in the year 1991.

- 8.** On the other hand, the defendant/respondent claims title to shop room no.25 by virtue of a purchase deed from the vendor of the mother of the plaintiffs, executed in the year 2015, that is, after the gift deed dated 2013.
- 9.** Learned counsel for the appellants argues that it is an admitted position from the deeds, that the property purchased by the mother of the plaintiffs was undivided and as such, the plaintiffs have equal right over the entire property comprised of shop room nos. 24 and 25.
- 10.** Furthermore, it is argued that the respondent has constructed a boundary wall between shop room nos.24 and 25 despite there being no clear demarcation or division of the said shop rooms at the time of purchase by the mother of the plaintiffs/appellants.
- 11.** As such, it is submitted that the plaintiffs have equal right over shop room no.25 as well.
- 12.** Learned counsel appearing for the respondent submits that the respondent has transferred shop room no.25 in the meantime in favour of third parties.
- 13.** That apart, it is pointed out that in the Schedule of the purchased deed of the plaintiffs' mother, it was categorically mentioned that the space earmarked for shop being no.24 was transferred to her.

- 14.** Thus, in her deed of gift, the mother transgressed her rights by donating more than she had, by indicating in the gift deed that she was transferring the space earmarked as shop room no.25 at the said premises “on payment of valuable consideration without any demarcation and/or boundary with the shop room no.24 of the said premises”.
- 15.** It is contended that, thus, although the mother of the plaintiffs/appellants purchased shop room no.24, she gifted shop room no.25 without having any title in the same and, as such, the gift deed is a nullity *ab initio*.
- 16.** Thus, it is submitted on behalf of the respondent that the learned Trial Judge rightly refused to grant *ad interim* injunction.
- 17.** On a perusal of the Schedule of the purchase deed of the mother of the plaintiffs/appellants, it is crystal clear that although the interest in the land was undivided, the subject-matter of the said purchase by the mother of the plaintiffs was the defined space, measuring an area of 113 Sq. ft. approximately, on the ground floor of the building “earmarked for shop being no.24”.
- 18.** However, by way of her gift deed, she transferred shop room no.25 to the appellants by taking advantage of the fact that the interest in the land was undivided.

19. On the other hand, the defendant/respondent purchased the earmarked portion for shop room no.25, which had not been purchased by the mother of the plaintiffs.
20. Thus, on a *prima facie* footing, we find that the mother of the plaintiffs never acquired any title in shop room no.25 which she purportedly donated to the plaintiffs/appellants, which is the plinth of the claim of title of the plaintiffs/appellants.
21. There is a gulf of difference between “undemarcated” and “undivided”.
22. Whereas by virtue of the former, what is meant is that the property-in-question is clearly separated and demarcated physically, the latter means that the rights of the parties might not have been partitioned by metes and bounds or divided by a registered partition deed or a decree of court.
23. Proceeding from such perspective also, since the vendor of the mother of the plaintiffs, through whom the plaintiffs claim title, was common with the vendor of the defendant/respondent, the question of the land being undivided does not have any germane bearing on the subject of the respective transfers, since different and specific shop rooms were sold to the vendor of the appellants’ mother and the respondent.
24. It is *prima facie* evident that only the area earmarked for shop room no.24, which is distinct and separate from shop room

no.25, was sold to the mother of the plaintiffs/appellants, whereas the earmarked portion of shop room no. 25 was transferred to the defendant/respondent, which is the subject-matter of the present *lis*.

- 25.** Hence, we do not find any *prima facie* proof of right, title or interest of the plaintiffs in the suit property, that is, shop room no.25.
- 26.** Moreover, since the said shop room has already been sold in favour of third parties, there is no scope of grant of *ad interim* injunction in respect of alienation of the same.
- 27.** Thus, we reiterate that we agree with the conclusion of the learned Trial Judge in the impugned order, refusing *ad interim* injunction, although disagreeing with the ground assigned for passing the same.
- 28.** In such view of the matter, FMA 683 of 2025 is dismissed on contest without any order as to costs, thereby affirming Order no.2 dated September 20, 2023 passed by the learned Civil Judge, Junior Division at Bidhannagar, District-North 24 Parganas in Title Suit No.325 of 2023.
- 29.** Consequentially, CAN 3 of 2025 is also disposed of.
- 30.** We make it clear that we have not conclusively determined the respective contentions of the parties in the suit as well as the injunction application pending in the court below on merits, and

it will be open to the learned Trial Judge to decide the pending temporary injunction application as well as the suit independently, on their own merits, without being unduly influenced by any of the observations made above.

- 31.** Urgent photostat copies of this order, if applied for, be issued to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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