

March 10, 2025
Sl. No.43
Court No.16
s.biswas

FMA 309 of 2025
With
CAN 1 of 2025

Amal Saha and others
vs.
Tanushree Dey and others

Mr. Siva Prosad Ghose
Ms. Ranjana Ghosh
Ms. Sanjona Saha

... for the appellant

Mr. Debanjan Mukherjee

... for the respondents

1. In view of certain questions of fact and law being involved, we admit the appeal for being heard of the grounds taken in the memorandum of appeal. On the consent of the parties, in view of the short ambit of the appeal, the appeal itself, along with the connected application, is taken up for hearing.
2. The present challenge has been preferred by the defendants in a declaratory suit. The learned advocate for the appellants argues that despite the predecessor-in-interest of the plaintiffs/respondents having transferred the entire share to the mother of the defendants/appellants much prior to the institution of the suit, injunction was granted in favour of the plaintiffs by overlooking such gross suppression of material facts.

3. Such contentions, of course, are controverted by the learned counsel for the respondents.
4. We find that in the event the defendants/appellants are able to produce the relevant documents in respect of their contention that much prior to filing of the suit, the entire title of the alleged predecessor-in-interest of the plaintiffs were transferred in favour of the mother of the present defendants/appellants, it could undoubtedly lead to a conclusion of gross suppression of material facts.
5. However, it is well-settled that at the stage of grant of ex parte ad interim injunction, the learned trial Judge is only supposed to look within the four corners of injunction application and proceed on the premise that such averments are correct, unless rebutted subsequently, and to consider whether on the basis of such averments and such averments alone, an injunction is to be granted to the plaintiffs.
6. Thus, we find little scope of interfering with the impugned order, since the allegation made by the defendants/appellants before this court and the documents sought to be relied on by them were not available at the ex parte ad interim stage before the learned trial judge, for which the learned trial judge cannot be blamed.

7. Hence, we do not find any scope of interference with the impugned order. Accordingly, FMA 309 of 2025 along with CAN 1 of 2025 stand dismissed on the grounds as indicated above.
8. However, it is made clear that we have not entered into the merits of the case of either of the parties and it will be open to the parties to urge their respective contentions on merits in connection with the main injunction application and all further proceedings of the suit.
9. The appellants shall be entitled to raise all the questions which are intended to be raised in the present appeal before the learned trial Judge in connection with the temporary injunction of the application. For such purpose, the defendants/appellants shall file written objection to the temporary injunction application before the learned trial judge within a week from date. The learned trial judge shall thereafter take up hearing of the injunction application itself for disposal and it is expected that the said injunction application shall be disposed of within six weeks from the date of communication of this order to the learned trial Judge.
10. There will be no order as to costs.
11. Liberty is given to the parties to approach the learned Judge-in-Charge in the trial Court, in the

event the regular Presiding Officer is not available to carry out the direction of this court as given above.

12. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)