

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMA 300 of 2025
With
CAN 1 of 2025

Kishan Bhartia
-vs-
Pawan Bhartia and Ors.

For the appellant : Mr. Mainak Bose, Sr. Adv.
Mr. Rishabh Karnani,
Mr. Anurag Bagaria,
Mr. Shyama Saran Bhalotia

Heard on : March 5, 2025.
Judgment on : March 5, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred against the refusal of a prayer for ad interim injunction made by the plaintiff / appellant.
2. In the opinion of the learned Trial Judge, as expressed in the impugned order, the claim of the plaintiff that the suit property

was orally gifted to him by one Omprakash Bhartia and again claiming the same through adverse possession are oxymoronic in nature. On such ground, ad interim injunction was refused.

3. Learned Senior Counsel appearing for the appellant contends that the possession of the suit flat was handed over to the plaintiff / appellant by one Omprakash Bhartia who did not have title to the property. Inasmuch as the defendant nos. 1 to 9 are concerned, who are described in the plaint as the “Pawan Bhartia Group”, they were the absolute owners against whom the plaintiff claims adverse possession.
4. As such, there is no conflict between the alternative cases made out by the plaintiff in his plaint.
5. However, on a plain reading of the plaint, we are unable to agree with the submission of learned Senior Counsel for the appellant.
6. In the same breath, in paragraph no. 11 of the plaint, the plaintiff pleads that Omprakash Bhartia, who got the suit flat as a reward and consideration for the resolution of dispute by him between the members of the Pawan Bhartia Group, “gifted” to the plaintiff the suit flat, that is, Flat No. 101, which is the

subject property and, on the other hand, in paragraph no. 17 of the plaint claims that with full notice and knowledge of Pawan Bhartia and Group and Omprakash Bhartia and the defendants, the plaintiff has been in exclusive and uninterrupted possession of the suit property since 1996. Again, in paragraph no. 12, it is pleaded that Omprakash Bhartia handed over physical possession to the plaintiff on September 25, 1996 and the plaintiff has since been in continuous, uninterrupted, open and hostile possession of the suit property since the said date.

7. The plaint case, *ex facie*, is mutually contradictory. If the property was gifted to the plaintiff by Omprakash Bhartia and the plaintiff accepted such gift, the said action *per se* would indicate that the plaintiff admitted Omprakash Bhartia to have title in the property. Again, it is claimed that the plaintiff has been in continuous, uninterrupted, open and hostile possession, in other words, in adverse possession in respect of the suit property. Such adverse possession, however, has been claimed against the defendant nos. 1 to 9. It is well-settled that in a case of adverse possession, such adverse possession has to be claimed as against the true owner.

8. Thus, in the even the plaint case of adverse possession is to be believed, such adverse possession is to be against defendant nos. 1 to 9, the Pawan Bhartia Group who have to be taken to be the true owners.
9. On the other hand, if the plaint case as made out in paragraph no. 11 thereof is to be accepted, the plaintiff admits Omprakash Bhartia to be the true owner or title holder of the suit property at the relevant juncture, since the property, according to the plaintiff, was gifted by Omprakash Bhartia to the plaintiff. In the event Omprakash Bhartia, being the owner, gifted the property to the plaintiff and put the plaintiff in physical possession thereof, a case of adverse possession cannot be maintained against the said true owner, Omprakash Bhartia, since once a possession is acquired on the basis of permissive occupation, the character of the possession remains the same throughout and cannot be converted to adverse possession.
10. On the other hand, if the defendant nos. 1 to 9 are to be the true owners of the property, the case as made out by the plaintiff also does not succeed, since in paragraph no. 9 of the plaint, it has been stated that four separate agreements were

executed by the Pawan Bhartia Group, in other words, the defendant nos. 1 to 9, in respect of the suit flat in favour of the defendant no. 10 company, of which Omprakash Bhartia has been the owner and in control thereof all along. In such a case as well, as per the plaint case, the defendant nos. 1 to 9 themselves agreed by executing agreements to hand over the property to Omprakash Bhartia and Omprakash Bhartia having handed over the property in turn to the plaintiff, there was no element of hostility which can be attributable to such possession even as regards defendant nos. 1 to 9.

11. Thus, the case of adverse possession cannot be substantiated even ex facie on the plaint pleadings. Hence, no prima facie case has been made out at all by the plaintiff even as per his plaint case.
12. Thus, we are of the opinion that the learned Trial Judge was justified in refusing the ad interim injunction.
13. Even if this court was of a different opinion than that of the learned Trial Judge and both views were possible on the same set of facts, it is well-settled that the appellate court shall not substitute its own views for that of the learned Trial Judge merely because another view is possible. An interference can

only happen in appeal if there is an error committed by the learned Trial Judge and the impugned order is 'wrong' and not in every case where the reasoning given by the learned Trial Judge does not suit the appellate court and the impugned order seems to the appellate court to be 'not right'. Seen from the above perspectives, there is no scope of interference in the appeal at all.

14. Accordingly, FMA 300 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 1 of 2025 also stands dismissed. There will be no order as to costs.
15. It is, however, made clear that the above observations are rendered in the context of an appeal from an ad interim refusal of injunction and shall not, in any manner, be considered to be binding at any further stage of the injunction application or the suit and the learned Trial Judge will be at liberty to decide the injunction application as well as the suit at all further stages of the proceeding independently and in accordance with law, without being unnecessarily influenced or prejudiced by any of the observations made above.

16. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)