

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FMAT 77 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Rajesh Jaiswal and others
Vs.
Suvotosh Nandi and another

For the appellants : Mr. Tanmoy Mukherjee,
Mr. Kajal Roy
For the respondents : Mr. Arnab Dutt
Heard on : 23.04.2025
Judgment on : 23.04.2025

Sabyasachi Bhattacharyya, J.:-

1. In view of plausible grounds having been made out for the delay in preferring the appeal, CAN 2 of 2025 is allowed, thereby condoning the delay in preferring FMAT 77 of 2025.
2. There will be no order as to costs.
3. Since both questions of fact and law are involved, we admit the appeal for hearing.
4. On consent of the parties, in view of the short ambit of the appeal, the appeal itself is taken up for disposal.

5. The bone of contention between the parties is a terrace adjacent to room no.6 on the second floor of the suit building.
6. The plaintiffs/respondents claim title over the suit property and have averred in the plaint and the injunction application in the court below that the defendants/appellants are attempting to make construction and to encroach upon the open terrace adjacent to room no.6 on the second floor.
7. By the impugned order, the defendants/appellants' application under Order XXXIX Rule 4 of the Code of Civil Procedure was dismissed and the temporary injunction application filed by the plaintiffs/respondents was allowed, thereby granting injunction restraining the defendants, their men and agents from making any construction, addition or alteration, fixing parapet walls/grills on Schedule 'A' property and further from interruption/disturbance of the plaintiffs to use and enjoy the common area mentioned in Schedule 'B' of the plaint till disposal of the suit.
8. In such context, it is required to be mentioned that schedule 'A' of the plaint refers to all that roof/terrace of room no.6 on the second floor of the suit building whereas schedule 'B' is all that common portion, roof, courtyard, verandah, passage, staircase, entrance, etc. of the said premises.
9. Learned counsel for the appellants argues that a confusion has been created inasmuch as by virtue of the agreement dated September 04,

2006, the original owners, including the present plaintiffs and one Shephali, the predecessor-in-interest of the present defendants/appellants, entered into an arrangement, whereby different portions of the second floor were allotted respectively to the plaintiffs and to Shephali. The Fourth Schedule of the said agreement specified that, insofar as the second floor is concerned, room no.3, with a kitchen, toilet, terrace and corridor on the second floor, as shown in a map or plan annexed to the agreement and bordered 'blue', along with undivided proportionate share in the land, were allotted to Shephali.

10. On the other hand, with regard to the second floor, room no.6, with a terrace on the second floor of the property, as shown in the self-same map or plan annexed to the agreement and bordered 'orange', along with similar undivided proportionate share in the land, was allotted to Tapas, the respondent no.2.
11. It is contended by the appellants that in the garb of obtaining an injunction in respect of the terrace adjacent to the room no.6, which belongs to Tapas, the plaintiffs have obtained an injunction with regard to entire terrace on the second floor, thereby encroaching upon the terrace adjacent to room no.3 which belonged to Shephali and has admittedly been transferred subsequently to the defendants/appellants.
12. Learned counsel for the plaintiffs/respondents controverts such allegation and submits that Schedule 'A' of the plaint exactly

corresponds with the portion of the second floor property which was allotted to Tapas and specified in the Seventh Schedule to the agreement. Since the defendants have attempted to encroach upon and make construction on such portion of the terrace adjacent to room no.6, the suit and the injunction application were necessitated. As such, it is argued that there is no illegality in the impugned order.

13. We find from the description of the suit property in Schedule 'A' of the plaint that there is scope of some confusion as to the identity of the same vis-à-vis the agreement dated September 04, 2006. In Schedule 'A' of the plaint, the property-in-question has been described as all that roof/terrace of room no.6 on the second floor.
14. Although a similar description has been used in the Seventh Schedule of the agreement, the same is qualified with the rider that the said portion of the terrace is marked and bordered 'orange' in the map or plan annexed to the agreement.
15. On the other hand, it is an admitted position that Shephali sold her share of the property, as mentioned in the Fourth Schedule to the self-same agreement, to the present defendants, which is comprised of, insofar as the second floor is concerned, of room no.3, its kitchen, toilet and a terrace and corridor.
16. Such portion of Shephali, as per the Fourth Schedule of the agreement and including the adjacent terrace, is marked and bordered with 'blue' in the map or plan annexed to the agreement.

17. Without reference to the plan, there might be some confusion as to the exact extent of the respective portions allotted to the plaintiff/respondent no.2 and the predecessor-in-interest of the defendants.
18. Thus, on a composite reading of the materials on record, the plan-in-question and the impugned order, we find that although there is otherwise no discrepancy or illegality in the impugned, it should be categorically clarified that the property described in schedule 'A' of the plaint, in respect of which the injunction has been granted, pertains exclusively to the terrace adjacent to room no.6 as described in the Seventh Schedule of the agreement dated September 04, 2006 and demarcated by 'orange' border in the plan annexed thereto.
19. It is further clarified that in the garb of implementing the injunction, the plaintiffs cannot obtain a right greater than they have by virtue of the Seventh Schedule of the agreement, read with the plan annexed thereto, which clearly demarcates the 'orange' portion of the terrace to be adjacent to room no.6 in respect of which the injunction has been passed.
20. It is also clarified that the portion of the terrace on the second floor itself, which is adjacent to room no.3 and has been demarcated in 'blue' border in the plan/map annexed to the agreement itself, exclusively belongs to the defendants/appellants and the injunction order is restricted to the portion demarcated in the plan with 'orange'

border and does not extent to the 'blue' border portion of the said map.

21. With the above clarification, we find that there is no scope for any interference with the impugned order, bearing Order No. 10 dated November 29, 2024 passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta in Title Suit No. 1750 of 2023.
22. Accordingly, FMAT 77 of 2025 is disposed of in the light of the above observations without any order as to costs.
23. IA No: CAN 1 of 2025 is also disposed of consequentially.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)