

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 No. 446 of 2025
+
CAN 1 of 2025

Sri Nitai Sau and others
-VS-
Sri Madan Mohan Singha

For the appellants : Mr. Sibasish Ghosh,
Mr. Kalipada Chakraborty.

For the respondent : Mr. Arijit Chatterjee,
Mr. Pronita Paramanya Naskar.

Heard on : June 23, 2025.

Judgment on : June 23, 2025.

Sabyasachi Bhattacharyya, J.:

1. The affidavit-of-service filed in Court today be kept on record.
2. On consent of the parties, we take up the appeal and the connected application for hearing by dispensing with other

formalities since the plaintiff/respondent is represented through counsel.

3. The plaintiff/respondent filed a partition suit in respect of 21 decimals of the property.
4. The defence of the appellants was that out of the said 21 decimals, 17 decimals have been acquired by the State, whereas the balance 4 decimals was transferred by demarcation exclusively to the defendants/appellants by the predecessor-in-interest of the plaintiff/respondent.
5. Learned counsel for the appellants argues that, by the impugned order, a blanket order of *status quo* was passed without adverting to any of the contentions of the parties and/or without any reason.
6. Learned counsel for the plaintiff/respondent opposes such contention and argues that the learned trial Judge took into consideration the arguments of the parties and upon arriving at a conclusion that there was a *prima facie* case made out and that the possession of the plaintiff was undisputed, granted *status quo*.
7. It is thus contended by the respondent that the impugned order ought to be sustained.

8. On a careful perusal of the impugned order, we find that although the narrative contains the arguments of the parties, the impugned order is absolutely cryptic insofar as reasoning is concerned.
9. The learned trial Judge merely proceeded on the premise that the issue raised by the defendants is not liable to be determined at this early stage of the suit and to determine the same evidence is required, without taking into consideration that, even if on a *prima facie* footing, the learned trial Judge was required to advert to the contentions and documents of the parties.
10. The learned trial Judge observed that *prima facie* it appears that the suit land is in possession of the plaintiff as well as that the defendants have right, title and interest over the 'Ka' schedule property and that a *prima facie* case of balance of convenience and inconvenience is made out.
11. However, paying lip-service to the parameters of grant of injunction would not suffice. The impugned order reflects absolute non-application of mind by the learned trial Judge to the materials on record, the documents produced by the parties and the respective pleadings of the parties, in particular

vis-à-vis acquisition and transfer of a demarcated specific portion of the property in favour of the defendant/appellant.

12. As such, the impugned order cannot be sustained in the eye of law.

13. However, keeping in view that the respondent was enjoying an ad interim order of status quo during the pendency of the temporary injunction application in the trial court, we are of the opinion that the purpose of justice would be sub-served if in the interregnum similar protection is given to the defendant and the injunction application is directed to be reheard and re-decided by the learned trial Court.

14. Accordingly, FMA No. 446 of 2025 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 12 dated January 28, 2025 passed by the learned Civil Judge (Senior Division), Second Court at Contai, District- Purba Medinipur, in Title Suit No. 164 of 2024 and remanding the temporary injunction application to the learned trial Judge for a fresh hearing and re-adjudication of the said application on merits on the materials already on record.

15. The learned trial Judge shall re-adjudicate the temporary injunction application on merits upon hearing both parties, on the evidence and materials already on record.

16. Both parties shall maintain status quo regarding the suit property till disposal of the temporary injunction application.
17. It is expected that the learned trial Judge shall complete such exercise as directed above as expeditiously as possible, positively within one month from the date of communication of this order to the learned trial Judge.
18. CAN 1 of 2025 is disposed of accordingly as well.
19. There will be no order as to costs.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)