

23rd April,
2025
(AK)
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F.M.A. 644 of 2025
IA No: CAN 1 of 2025

Md. Khalilur Rahaman Razvi
Vs.
Chakradhar Roy and others

Mr. Sharanya Chatterjee
Mr. Dipayan Das
Mr. Saptak Naskar

...for the appellant.

1. The present appeal has been preferred against the grant of temporary injunction by allowing an injunction application filed by the defendants/respondents.
2. Learned counsel for the appellant argues that the plaintiff/respondent no.1 has not categorically averred that the suit property is unpartitioned and merely on the strength of recording of the names of four persons in the records of rights has filed the present suit for partition.
3. It is argued that, as such, the plaint case is contradictory.
4. Moreover, all the co-owners, even if the property is deemed to be joint, have not been impleaded.
5. Upon a perusal of the impugned order, we find that the learned trial Judge proceeded on the basis that triable issues have been made out.

6. As per the plaint case, there were several co-owners of the suit property, which is a joint property, and that in a separate title suit filed by the defendant themselves, at the injunction stage it was observed by the concerned court that the suit property is unpartitioned.
7. In the event the defendants argue that the suit is bad for non-joinder of necessary parties, it is for the defendants to show before the court and prove that there are other co-owners of the property as well.
8. Moreover, the appellant's argument is self-contradictory, since in the same breath it is argued that the plaintiff does not have title to the property and that all co-owners (thus pre-supposing that the plaintiff is also an owner) have not been impleaded.
9. Although the defendant no.1/appellant claims by virtue of a particular title deed which the defendant no.1 claims to have conferred right on a demarcated portion of the property, in the absence of proof that the vendor of the defendant no.1 in the first place was not a co-owner but was the exclusive owner of the transferred property, it cannot be conclusively determined as to whether the jointness of the property was severed at any point of time by partition by way of metes and bounds.

10. In any event, since arguable questions have been raised, the learned trial Judge was justified in granting injunction.
11. Even otherwise, the observations arrived at by us and by the learned trial Judge in the impugned order at the injunction stage would be tentative and not binding at subsequent stages of the hearing of the suit itself.
12. The issues raised in the suit are required to be decided on a full-fledged adjudication by trial on evidence and as such we do not find any irregularity or illegality in the impugned order.
13. Accordingly, FMA 644 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
14. Consequentially, CAN 1 of 2025 is also dismissed.
15. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)