

AD- 15
Ct No.16
02.04.2025
(SSS)

FMA 451 of 2023
With
CAN 1 of 2023
With
CAN 2 of 2023
With
CAN 5 of 2025

Karuna Bar and Ors.
Vs.
Prashanta Kumar Bar and Ors.

Mr. Partha Chakraborty,
Mr. Rishabh Dutta Gupta,
Ms. Debanjali Payra
...For the Appellants.

Mr. Debdutta Raha
.....For Respondent No. 1.

Mr. S. Sengupta
Mr. Rahul Kumar Singh,
Ms. Utsa Podder
....For Respondent Nos. 10, 11 & 20.

1. Learned Counsel for the appellants submits that CAN 5 of 2025 has been filed seeking injunction against the added respondents.

2. It is pointed out by learned Counsel appearing for respondent no. 1 and learned Counsel for respondent nos. 10, 11 and 21 that the added respondents have not yet been impleaded in the

partition suit itself, from which the present appeal emanates.

3. The brief background of the case is that a partition suit has been filed by the plaintiffs/appellants, in connection with which an injunction application has also been filed by them. The prayer for ad-interim injunction having been refused, an appeal was preferred, in which there were certain directions passed on the learned Trial Judge to re-consider whether to extend the ad-interim order granted by this court in the appeal. The grievance of the appellants is that without considering such observations, the learned Trial Judge again refused ad-interim injunction. The present appeal is against such second refusal.

4. As it transpires, the main injunction application in the trial court is scheduled to be heard on May 14, 2025.

5. In the meantime, it is alleged by the appellants that certain third parties to the suit are claiming that they have purchased the suit property. On such premise, those third parties were added as respondents in the present appeal. CAN 5 of 2025 has been filed for injunction against the said added parties.

6. Learned Counsel for the appellants alleges that it is the added parties who are now making day-to-

day construction, in support of which submission learned Counsel seeks to rely on certain photographs and the other annexures to the application bearing CAN 5 of 2025.

7. Upon careful consideration of the materials on record and the submissions of parties, we are of the opinion that an appellate hierarchy is somewhat cylindrical or pyramidal.

8. The apex of the pyramid cannot go beyond the base.

9. Since the present appeal itself arises out of the refusal to grant ad-interim injunction against the defendants (original respondents herein) in a partition suit where the added respondents have not been impleaded as yet, in the event we grant injunction in respect of the added parties to the appeal, it would be entirely beyond the scope, not only of the suit but also the impugned order.

10. The court taking up a miscellaneous appeal against an ad-interim order passed in a suit operates in a much limited jurisdiction than a regular first appellate court. In the event the appeal had been preferred against a decree passed in a suit, the legal fiction of an appeal being the continuation of suit could have been applied and this court could have added the parties and granted injunction against them.

11. However, within the limited scope of the miscellaneous appeal, which is in respect of refusal of an ad-interim injunction against the original respondents herein, granting an injunction against the added respondents, who are not yet impleaded in the suit, would be entirely *de hors* the jurisdiction of this court.

12. Moreover, since the injunction application is already pending in the court below and is scheduled to be taken up on May 14, 2025 and the present appellants are at present without any injunction even before this court for some time now, we deem it fit that liberty should be given to the appellants to make appropriate application for addition of the alleged purchasers in the suit and seeking fresh injunction against them and/or seeking an extension of injunction against the said added parties in connection with the main injunction application which is already pending.

13. In view of the above, FMA 451 of 2023 is disposed of without interfering with the impugned order, granting liberty to the plaintiffs/appellants to file appropriate application for addition of the alleged subsequent purchasers as parties to the partition suit and also to seek injunction/extension of injunction against such added parties, also before the learned Trial Court. If so approached, the learned

Trial Judge shall dispose of such applications as expeditiously as possible, preferably within three weeks from the date of filing of such applications, upon giving an opportunity of hearing to the defendants/respondents, without being influenced on merits in any manner by any of the observations made above.

14. CAN 1 of 2023, CAN 2 of 2023 and CAN 5 of 2025 are also disposed of in the light of the above observations. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)