

A-44
Ct No.16
09.06.2025
TN

FMAT 173 of 2025

IA No: CAN 1 of 2025

Abu Jafar Sardar
Vs.
Muzibar Dhali

Mr. Birendra Kumar Jha,
Mr. Anish Das,
Mr. Manish Patra

....for the appellant

1. The present appeal has been preferred against the rejection of an application under Order XXXIX Rule 4 of the Code of Civil Procedure filed by the defendant/appellant in a suit for partition and consequential reliefs.
2. Learned counsel for the appellant argues that although the suit has been filed for partition and an ad interim injunction has been obtained by the plaintiff/respondent on such premise, the plaintiff suppressed the material fact that a demarcated portion was transferred by way of the transfer deed in favour of the plaintiff, thereby severing the joint status of the property and, hence, no partition suit is maintainable. As such, it is contended that the

learned Trial Judge ought to have vacated the injunction order in view of such gross suppression of materials fact.

3. We find from the impugned order that the learned Trial Judge proceeded on the premise that the status quo order was passed at the ad interim stage on the basis of the averments made in the application for injunction and there was no suppression of material facts involved as such.
4. Although the defendant/appellant might have made out an arguable case, insofar as the learned Trial Judge is required to adjudicate as to whether specifically demarcated portions of the property were transferred in favour of the plaintiff, the said objection partakes the character of an adjudication on the merits of the injunction application and cannot strictly come within the purview of gross suppression of material facts evident on the face of the record.
5. In the event such a liberal construction is given to the expression “suppression of material facts” for the purpose of Order XXXIX Rule 4 of the Code of Civil Procedure, every figment of argument in respect of an injunction application, even on merits, would be broadly covered within the ambit of such expression.
6. Hence, we do not find any illegality *per se* in the trial court refusing to vacate the interim order under Order XXXIX Rule 4 of the Code of Civil Procedure,

since the parameters of the said provision were not met.

7. Needless to say, the grounds on which the present appeal and the application under Order XXXIX Rule 4 of the Code of Civil Procedure have been preferred by the appellant are required to be adjudicated on merits by the learned Trial Judge at the time of final hearing of the temporary injunction application, without being influenced in any manner either way by the observations made in the present order and/or in the order impugned herein.
8. However, in the light of the above observations, we do not find any scope of admitting the appeal.
9. Accordingly, F.MAT 173 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure, leaving it open to the appellant to argue all points taken in the memorandum of appeal as well as the application under Order XXXIX Rule 4 of the Code of Civil Procedure at the final hearing of the temporary injunction application.
10. Since we are apprised that a written objection has already been filed by the appellant to the temporary injunction application filed in the court below, we are of the opinion that the learned Trial Judge should dispose of the temporary injunction application on merits as expeditiously as possible, preferably within six weeks from the date of communication of this order to the learned Trial Judge.

11. IA No: CAN 1 of 2025 is disposed of as well in the light of the above observations.
12. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)