

D/L.5.
June 11, 2025.
MNS.

FMA No. 757 of 2025
+
CAN 1 of 2025

Yasir Ahmed
Vs.
Ezaz Ahmed @ Adil Ahmed

Mr. Susenjit Banik,
Ms. Shreya Agarwal,
Ms. Sutapa Mukhopadhyay

... for the appellant.

Mr. Sanjoy Mukherjee,
Mr. Arghadip Das

...for the respondent.

1. The present challenge has been preferred by the plaintiff in a suit for specific performance of a contract.
2. Learned counsel for the appellant submits that the learned trial Judge dismissed the injunction application without considering that the plaint case refers to an oral agreement to transfer the property in favour of the plaintiff/appellant and the existence of such agreement is to be gathered from attending circumstances.
3. It is submitted that since the plaint case is specific as to such agreement having been entered into and consideration having passed without any receipt, the learned Trial Judge ought to have granted an injunction to protect the property till disposal of the

suit and to grant an opportunity to the plaintiff to prove the plaint case by way of due evidence at the trial of the suit.

4. Learned counsel for the appellant harps on the issue that the appellant has been in possession of the suit property, which also indicates that such possession was pursuant to the oral agreement for transfer.
5. However, in the same breath, learned counsel contends that the appellant, being a grandson of the original tenant, has continued in possession of the property.
6. We also find from the impugned order that the defence case was that the appellant is a rank trespasser in respect of the suit property.
7. Even going by the plaint case, since the appellant claims to have continued in possession as a tenant on the demise of the original tenant, who is his grandmother, possession cannot be a determining factor to prove even *prima facie* that such possession was handed over pursuant to any oral agreement for transfer.
8. Insofar as the impugned order is concerned, we find that the learned trial Judge has adverted to the materials on record and the pleadings of the parties and has applied the correct yardsticks, including the fact that despite having alleged that consideration of Rs.1,50,000/- was paid, not a

single scrap of paper was produced by the appellant to substantiate such passage of consideration amount.

9. The learned trial judge also observed in the impugned order that allegedly the agreement for sale was made on July 2, 2022 and the father of the defendant died on September 30, 2022. In the long two years between the filing of the suit and the alleged agreement being executed, the plaintiff has failed to produce any document to show that there was any request from the plaintiff to the defendant to complete the sale transaction.

10. On such finding, the learned Trial Judge arrived at the conclusion that the plaintiff has failed to prove prima facie case for grant of injunction.

11. Moreover, the learned Trial Judge observed that the injury likely to be caused to the plaintiff, if at all, could be compensated in terms of money and as such, on such score as well, the injunction was refused.

12. Since the learned Trial Judge has taken a plausible view applying the test of preponderance of probabilities, we are of the opinion that there is no scope of interference with the said order. Rather, we would like to appreciate the way in which the learned Trial Judge adverted to all the relevant materials on record and the governing law and

came to reasoned findings on the injunction application of the plaintiff/appellant.

13. Thus, there is no scope of interference with the impugned order.

14. Accordingly, FMA No. 757 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

15. Consequentially, CAN 1 of 2025 stands dismissed as well.

16. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)