

Item- 16-09-2025
9.

sg Ct. 1

FMAT 148 of 2025
CAN 1 of 2025

Jyotshna Begam
Versus
Md. Mahiuddin Hasan & Ors.

Mr. Sabyasachi Chatterjee
Mr. Kiron Sk.
Ms. Monalisha Sinha

...for the petitioner

Mr. Abul Mansoon

...for the defendant nos.1,3,4,6

1. The present appellant is the plaintiff in a partition suit filed in the year 2025 being Partition Suit No. 58 of 2025. In the said suit, the plaintiff prayed for an order of injunction. The said application was dismissed on cost on the ground that according to the plaintiff, she acquired interest in the suit property in the year 2018 when her vendors already filed a partition suit being P.S. No. 132 of 2020 without disclosing the said transfer.
2. The proper course for the plaintiff would have been either to get herself substituted on the basis of the devolution interest or addition of party, as the case may be, instead of filing a fresh partition suit claiming partition of the self-same properties. In the event there has been any transfer of share in her favour in 2018 by the vendors who are allegedly the co-sharers of the property in question, there could not be any need for filing a fresh partition suit thereby eliminating multiplicity of proceedings and the possibility of conflict of decisions.

3. In view thereof, we dispose of the appeal by granting leave to the present appellant to make appropriate application before the learned Trial Court before whom P.S. No. 132 of 2020 is pending and upon such application being allowed, to withdraw the subsequent suit namely, P.S. No. 58 of 2025 as in our view, once the present plaintiff is allowed to be substituted or added, she would have an ample opportunity to claim reliefs as claimed in P.S. 58 of 2025.
4. The plaintiff upon being added or substituted, as the case may be, in the said proceeding, shall be entitled to pray for reliefs as permissible in law to protect her interest.
5. The order of cost is, however, set aside.
6. With the above observation, the appeal and the application are accordingly, disposed of.
7. We make it clearly that we have not gone into the merits of the application for temporary injunction and if filed, it shall be considered afresh after the aforesaid formalities are concluded.
8. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

[Soumen Sen, C.J. (Acting)]

(Apurba Sinha Ray, J.)