

AD-88
Ct No.16
22.05.2025
TN

FMAT 154 of 2025
IA No: CAN 1 of 2025

Sahidul Islam and others
Vs.
Sri Uday Chakraborty and others

Mr. Arnab Roy,
Mr. Satyam Mukherjee,
Mr. Purnendu Shekhar Ghosh

....for the appellants

1. The present appeal has been preferred against an order refusing ad interim injunction at the behest of the plaintiffs/appellants.
2. Learned counsel for the appellants submits that previously a partition suit was filed by the appellants, in which temporary injunction was refused by the learned Trial Judge. Having come up in appeal against the said order, this Court disposed of the said appeal, bearing FMA 592 of 2015, thereby directing the parties to maintain *status quo* as regards the nature and character of the suit property till disposal of the partition suit as well as restraining both the parties from raising any construction and/or further construction over the suit property and/or from changing the nature and character thereof till disposal of the suit.
3. The parties were also directed to maintain *status quo* with regard to their possession in the suit property till the disposal of the suit.

4. Thereafter, learned counsel for the appellants submits, the records of the said suit were completely destroyed. By relying on an information slip annexed at page-60 of the injunction application filed in the present appeal, it is pointed out that the order sheets of the suit bearing Title Suit No. 313 of 2012 are in completely torn condition, although the suit is still pending.
5. It is submitted that the appellants are facing a situation where they have an existing suit but they cannot press for the remedy in the absence of the records of the said suit. Being thus compelled, a fresh partition suit has been filed, in connection with which the present injunction was sought.
6. Upon a perusal of the impugned order, we find that the same is vitiated by lack of reasons. However, we are unable to interfere for other reasons as enumerated below:
7. Whatever might be the present condition of the records of Title Suit No. 313 of 2012, the said partition suit on the self-same cause of action and on the strength of the same right, title and interest of the parties as claimed in the present, is still pending. Although the order sheets of the same are in a completely torn condition as per the information slip produced before us, there is nothing to show that the records have been otherwise destroyed. In any event, it is always open for the parties to the said suit to

approach the concerned court and/or the learned District Judge having administrative control in the concerned District, that is, the District of North 24 Parganas, for taking appropriate steps for reconstruction of the records and/or tracing the file of the case.

8. Be that as it may, in the teeth of the pendency of the previous partition suit, the principle of Section 10 of the Code of Civil Procedure applies and a second suit is *prima facie* barred.
9. That apart, we find from the judgment and order dated March 03, 2016 passed in FMA 592 of 2015, which arose out of Title Suit No. 313 of 2012, that the said *status quo* order is still subsisting. Thus, the reliefs sought in the present injunction application in the second suit have already been granted and are subsisting in favour of the appellants in connection with the previous suit, bearing Title Suit No. 313 of 2012, thus denuding the appellants from any cause of action for seeking further injunction on the self-same grounds.
10. Hence, we do not find any reason to interfere with the impugned order, although we are not happy with the sufficiency of reasons attributed therein, but since we agree with the conclusion thereof.
11. Accordingly, in the light of the observations made above, FMAT 154 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

12. Consequentially, IA No: CAN 1 of 2025 is also disposed of.
13. There will be no order as to costs.
14. It is made clear that the merits of the respective contentions of the parties in the present suit or in the previous suit have not been touched upon by us and it will be open to the concerned Court(s), where the said suits are pending, to decide such suits on their own merits.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)