

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMA No. 779 of 2025
+
CAN 1 of 2025

Najim Uddin Mondal and another
-VS-
Md. Abdul Hannan Mondal and others

For the appellants : Mr. Shibaji Kumar Das,
Ms. Deblina De,

For the respondent no. 1 : Mr. Saptarshi Kumr Kundu,
Mr. Raju Das.

Heard on : June 17, 2025.

Judgment on : June 17, 2025.

Sabyasachi Bhattacharyya, J.:

1. On consent of the parties, in view of the short ambit of the appeal, the appeal itself is taken up for hearing along with the connected application.

2. Learned counsel appearing for the appellants submits that, suppressing the stay of operation (in appeal) of an injunction order passed in connection with a previous declaratory suit filed by the plaintiff/respondent no. 1 in respect of the self-same property, the impugned ad interim order of injunction was obtained by the plaintiff/respondent no. 1.
3. Learned counsel for the appellants further submits that the respondent no. 1, apart from such suppression, is barred by law and fact in obtaining injunction, since the sale deed executed in favour of the appellants in respect of one of the suit plots, bearing no. 726, has been produced by the appellants in the court below as well as the LR Records of Rights in the name of the appellants.
4. Learned counsel for the plaintiff/respondent no. 1 submits that the previous suit, in connection with which initially an injunction order was granted but subsequently stayed, has been withdrawn by the plaintiff/respondent no. 1.
5. It is further submitted that in the appellants' application under Order XXXIX Rule 4 of the Code of Civil Procedure filed in the suit for vacating the ad interim order impugned herein, it has been virtually admitted that the respondent no. 1 is a co-sharer

in respect of plot no. 726 as well. A copy of the said application under Order XXXIX Rule 4 of the Code of Civil Procedure is handed over in Court and is kept on record.

6. We find, however, that in the application under Order XXXIX Rule 4 of the Code, there is no clear admission on the part of the appellants as to the respondent no. 1 being a co-sharer in respect of plot no. 726. Rather, the appellants have categorically stated therein that out of the two suit plots, the defendants/appellants are owners of plot no. 726 whereas they do not have any title regarding the other suit plot, bearing plot no. 727/807.
7. We consider the submissions of both sides and come to the conclusion that the fact of the injunction order passed in favour of the plaintiff/respondent no. 1 in the previous suit regarding the self-same property having been stayed by an appellate court is germane for adjudication of the present injunction application.
8. Thus, the suppression of such relevant fact by the plaintiff / respondent no. 1 tantamounts to suppression of material fact for the purpose of obtaining the impugned order of ad interim injunction.

9. Accordingly, we are of the opinion that the ad interim order should be set aside on such ground alone.
10. Thus, FMA No. 779 of 2025 is allowed, thereby setting aside the impugned order, bearing Order No. 2 dated January 28, 2025 passed by the learned Civil Judge (Senior Division), at Diamond Harbour, District- South 24 Parganas in Title Suit No. 28 of 2025. We direct the appellants to file their written objection to the temporary injunction application, in connection with which the impugned order was passed, within a week from date in the trial court.
11. The learned Trial Judge shall dispose of the temporary injunction application as well as the application filed by the appellants under Order XXXIX Rule 4 of the Code of Civil Procedure together as expeditiously as possible, positively within four weeks from the communication of this order to the trial court.
12. It is made clear that we have not gone into the merits of the contentions of the parties insofar as the final hearing of the temporary injunction application and/or the application filed under Order XXXIX Rule 4 of the Code is concerned and it will be open to the learned Trial Judge to decide the said

applications independently on their own merits without being influenced in any manner by any of the observations made hereinabove.

13. CAN 1 of 2025 is also disposed of in the light of the above observations.

14. There will be no order as to costs.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)