

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 Supratim Bhattacharya

FMA 861 of 2005
with
CAN 1 of 2005
(Old No: CAN 6896 of 2005)

With

CAN 4 of 2010
(Old No: CAN 4786 of 2010)

With

CAN 5 of 2010
(Old No: CAN 7901 of 2010)

Bhagoboti Chorone Roquitte
Vs.
Sri Debi Chorone Roquitte

With
FMA 565 of 2011
With

CAN 2 of 2022
Sri Debi Chorone Roquitte
vs.
Sri Parboti Chorone Roquitte and Ors.

For the appellant in FMA 565 of 2011	:	Mr. Saptangsu Basu, Ld. Snr. Adv., Mr. Gautam Das, Adv.
For the appellant in FMA 861 of 2005 & for the respondent in FMA 565 of 2011	:	Mr. Souradipta Banerjee, Adv.
For the respondent nos. 5 & 8 in FMA 565 of 2011	:	Mr. P. Das, Adv.
For the defendants in FMA 861 of 2005 & FMA 565 of 2011	:	Mr. Satadeep Bhattacharya, Mr. Sourav Bhagat, Mr. Debayan Sen, Mr. Niket Ojha, Ms. Sriparna Mitra, Ms. Deveshi Bose, Advs.
For the respondents in FMA 861 of 2005	:	Mr. Satadeep Bhattacharya, Mr. Sourav Bhagat, Mr. Debayan Sen, Mr. Niket Ojha, Ms. Sriparna Mitra, Mr. Jishnujit Roy, Ms. Deveshi Bose, Advs.
Heard on	:	December 2, 2025.
Judgment on	:	December 2, 2025.

Sabyasachi Bhattacharyya, J.:

In Re: FMA 565 of 2011

**With
CAN 2 of 2022**

1. FMA 565 of 2011 is taken up first for hearing.
2. The present appeal arises at the instance of a defendant in a suit filed by one Bhagoboti Chorone Roquitte for declaration that the plaintiff (Bhagoboti) is the principal trustee in respect of the trust estate of Dourga Chorone Roquitte and is entitled to participate in the management of the trust properties including the said premises, including collection of rent, induction of tenants, accepting surrender of tenancies etc., for a declaration that defendant no. 7 is not the recorded tenant in the said premises and is not entitled to occupy any portion of the premises and for permanent injunction in aid of the said primary reliefs. During pendency of the said suit, the said Bhagoboti Chorone Roquitte (since deceased), allegedly appointed one Parboti Chorone Roquitte, his son, as trustee in his place upon himself retiring as a trustee.
3. On the strength of such appointment, an application was filed by the plaintiff for substitution of the said Parboti Chorone

Roquitte under Order XXII Rule 10 of the Code of Civil Procedure.

4. Simultaneously, the defendant nos. 1 and 2 had also allegedly appointed strangers to the suit as trustees and had filed an application for substitution of the said appointed trustees, also under Order XXII Rule 10 of the Code.
5. By the impugned order, both the said applications were allowed, thereby directing substitution of Parboti Chorone Roquitte as well as the appointees of defendant nos. 1 and 2.
6. Learned senior counsel appearing for the appellant in FMA 565 of 2011, i.e. defendant no. 1 in the suit, argues that the impugned order is devoid of a single line of reasoning. The learned Trial Judge mechanically allowed both the applications without adjudicating the specific objections taken by the defendants.
7. It is argued that since Bhagoboti Chorone Roquitte himself had filed the suit for declaration of his trusteeship, the said trusteeship was itself in a cloud and as such, the said plaintiff could not have appointed a further trustee in his place.
8. Also, on merits, it is argued that the said Bhagoboti Chorone Roquitte did not have any power under the settlement deed to

appoint trustees. However, these points were never considered by the learned Trial Judge while mechanically passing the impugned order. It is contended that the impugned order ought to be set aside on such ground alone.

9. Learned counsel appearing for Parboti Chorone Roquitte, the respondent, submits that in the meantime, the said Bhagoboti Chorone Roquitte has met his demise, leaving behind Parboti Chorone Roquitte as one of his heirs and legal representatives.
10. Thus, in any event, it is submitted that the said Parboti Chorone Roquitte is entitled to step into the shoes of Bhagoboti Chorone Roquitte, as his son, apart from being the appointee of the said Bhagoboti as trustee.
11. Secondly, learned counsel for Parboti Chorone Roquitte submits that the defendant nos. 1 and 2 made appointments of trustees without themselves retiring, which was not contemplated in the deed of settlement/Will in question.
12. It is submitted that as per the said deed, only a retiring trustee could appoint a trustee in his place. Thus, having themselves retained their trusteeships, the defendant nos. 1 and 2 were not entitled to appoint further trustees and, as such, the

application filed under Order XXII Rule 10 of the Code by the said defendants ought to have been dismissed by the learned Trial Judge.

13. Such contentions are controverted by learned senior counsel appearing for the appellant.
14. However, on a perusal of the impugned order, we find that none of the arguments made before us as well as before the learned Trial Judge are reflected in the order. By the impugned order, the learned Single Judge mechanically allowed both the applications without undertaking any exercise in the nature of a primary adjudication under Order XXII Rule 5 of the Code of Civil Procedure or even otherwise took any effort whatsoever to adjudicate on the respective objections taken by the parties to each other's application under Order XXII Rule 10 of the Code. Thus, the impugned order is devoid of reason and ought to be set aside on such ground alone.
15. We are conscious of the fact that the parties have argued on the merits of the matter before us as well. However, we choose not to deal with the merits of the same at this stage, since the learned Trial Judge did not advert to any of the contentions of the parties and in the event we enter into such

questions, it will be the first adjudication and this court, sitting in appeal, would be acting in the capacity of the first forum, which would deprive both the parties of a forum of challenge. Thus, the only appropriate course of action would be to set aside the impugned order and send the matter back to the learned Trial Judge for re-adjudication.

16. At this juncture, we take note of the fact that insofar as Parboti is concerned, he would be entitled otherwise, within the contemplation of Order XXII Rule 3 of the Code, to be impleaded in the capacity of the heir of Bhagoboti Chorone Roquitte.
17. However, it is contended by us before learned senior counsel appearing for the appellant that in terms of the trust deed, there cannot be any automatic appointment of the heir of a trustee as trustee on his demise.
18. As such, it is arguable as to whether the mechanism contemplated in the trust deed at all permits Parboti Chorone Roquitte to step into the shoes of Bhagoboti Chorone Roquitte automatically as his heir.
19. Hence, the default provision of Order XXII Rule 3 of the Code cannot be invoked at this stage. Moreover, as rightly pointed

out by the parties, the particulars of the other heirs of Bhagoboti Chorone Roquitte, if any, have not been disclosed, nor have they been impleaded in the suit. As such, taking into consideration the entirety of the matter as discussed above, we are of the opinion that the impugned order ought to be set aside and the matter to be relegated to the learned Trial Judge for the purpose of re-adjudication of all the applications under Order XXII Rule 10 of the Code on merits. In the event the application for substitution of Parboti Chorone Roquitte under Order XXII Rule 10 of the Code of Civil Procedure is turned down, the said Parboti Chorone Roquitte, in any event, along with the other heirs of Bhagoboti Chorone Roquitte, might be entitled to seek impleadment within the contemplation of Order XXII Rule 9 of the Code of Civil Procedure in which case, the same will be decided by the learned Trial Judge appropriately in accordance with law. However, it would be premature for this court to consider such situation, since it is still unknown as to which way the outcome of the application for substitution of Parboti Chorone Roquitte under Order XXII Rule 10 of the Code would go after the re-adjudication.

20. In such view of the matter, FMA 565 of 2011 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 72 dated July 12, 2010 passed by the learned Judge, Third Bench, City Civil Court at Calcutta in Title Suit No. 988 of 2004, and remanding the matter to the Trial Court for a fresh adjudication of all the applications under Order XXII Rule 10 of the Code of Civil Procedure, which were decided by the impugned order, afresh and in accordance with law. While doing so, the learned Trial Judge shall give a fresh opportunity of hearing to both sides and adjudicate the applications on merits, upon consideration of the objections taken by the respective parties and by adverting to the governing law in that regard.
21. It is expected that such adjudication shall be completed as expeditiously as possible, keeping in view the long pendency of the suit, preferably within two months from the date of communication of this order to the learned Trial Judge.
22. In view of the order passed by us not substantially affecting the unserved parties, CAN 2 of 2022 is disposed of in the light of the above observations.
23. There will be no order as to costs.

24. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

In Re: FMA 861 of 2005
with
CAN 1 of 2005
(Old No: CAN 6896 of 2005)
With
CAN 4 of 2010
(Old No: CAN 4786 of 2010)
With
CAN 5 of 2010
(Old No: CAN 7901 of 2010)

25. The present challenge had been preferred originally by one Bhagoboti Chorone Roquitte (since deceased), the father of the present appellant, the latter having been substituted under Order XXII Rule 10 of the Code of Civil Procedure on the demise of his father, the original appellant, during pendency of the appeal.
26. The suit, from which the appeal arises, is primarily for declaration that Bhagoboti Chorone Roquitte is the principal trustee in respect of the suit property and for consequential reliefs.
27. Learned counsel appearing for the appellant argues that the learned Trial Judge dismissed the temporary injunction

application of Bhagoboti Chorone Roquitte on an erroneous consideration of the law and the facts of the case.

28. By placing reliance on the annexures to the injunction application filed before this court which, it is submitted, were also a part of the injunction application in the trial court, it is argued that the respondents have been inducting third parties as tenants to the suit property at huge rents and depriving the appellant from the usufructs of the trust.
29. It is further submitted that in the event the respondents are permitted to transfer the suit property or encumber the same in any manner and/or make constructions on the property, which is a heritage building, the purpose of the trust will suffer.
30. It is submitted that in such event, the suit will be rendered infructuous before being heard finally.
31. Learned counsel for the appellant further points out that at the ad interim stage of the present appeal, restraint orders by way of ad interim injunction was passed by coordinate Benches.
32. It is also contended that since the appellant was substituted under Order XXII Rule 10 of the Code of Civil Procedure, the respondents cannot now raise objection to the locus standi of

the present appellant to pursue the cause of the original plaintiff.

33. Learned counsel appearing for the respondents controverts such allegations and submits that the original plaintiff, namely late Bhagoboti Chorone Roquitte, during his lifetime, had attained a mature age and was a nonagenarian at the juncture when the injunction application was moved.
34. As such, the learned Trial Judge took note of the fact that Bhagoboti Chorone could not personally come to attend the meetings of the trustees and/or to participate in the business and the affairs of the trust.
35. Thus, it is alleged, he was entirely dependent on the present appellant, his son, and his other children, who used to run the show on behalf of Bhagoboti Chorone, without being empowered to do so under the deed of trust.
36. It is further argued by learned counsel for the respondents that the remaining trustees on the demise of Bhagoboti Chorone, that is, the respondents, in any event, are entitled to administer the trust property and as such the learned Trial Judge was justified in refusing to grant any injunction.

37. Upon a consideration of the impugned order, we find that the primary premise on which the learned Trial Judge proceeded was that Bhagoboti Chorone, being of advanced age, was not capable of participating in the day-to-day affairs of the trust and was controlled fully by his children, including Parboti Charan Roquitte, the present substituted appellant.
38. However, we find that the learned Trial Judge omitted to take into consideration that the suit was ultimately for the benefit of the trust property.
39. As such, in a suit of such a nature, one of the duties of the court is to ensure that the trust property is protected, at least till disposal of the lis.
40. From such perspective, although the living trustees, being the respondents, are entitled to induct tenants or otherwise encumber the property to a limited extent, in the event the respondents are permitted to sell out the property or transfer irrevocably the property or any part of it in favour of third parties, the suit might be rendered infructuous and the trust estate may also suffer.
41. Even otherwise, till disposal of the suit, although the respondents ought not to be restrained from inducting tenants

or collecting rent from them, since the matter is *sub judice* before the Trial Court till now, the ends of justice would demand that quarterly audited accounts should be filed by the defendants/respondents before the Trial Court for the sake of transparency and accountability in management of the trust estate.

42. Since learned counsel for the respondents submits that the property may be in a dilapidated condition, requiring repair, we intend to make the restraint order on changing the nature and character of the property conditional to permission being obtained from the trial court.
43. However, otherwise, at this juncture, if the respondents are given a blanket charter to alter the nature and character of the property, the ultimate outcome of the suit may be adversely prejudiced.
44. In such view of the matter, F.M.A 861 of 2005 is partially allowed, thereby modifying the impugned order, being Order No.24 dated March 31, 2005 passed by the learned Judge, Fifth Bench of the City Civil Court at Calcutta in Title Suit No.988 of 2004, to the extent that the present defendants/respondents shall remain restrained by an order of

injunction from selling out and/or transferring irrevocably the suit property in favour of third parties and/or from altering the nature and character of the suit property in any manner, both without the leave of the trial court.

45. If an application for leave is filed in either regard, the learned Trial Judge shall decide the same in accordance with law upon giving opportunity of hearing to all parties.
46. That apart, the defendants/respondents shall file quarterly audited accounts, the first of which shall be filed for the first quarter of the year 2026 and thereafter for each quarter of the year before the trial court, by the end of the then current quarter.
47. It is also made clear that the income from and expenditure incurred in respect of the subject property shall abide by the outcome of the suit.
48. CAN 1 of 2005 (Old No: CAN 6896 of 2005), CAN 4 of 2010 (Old No: CAN 4786 of 2010) and CAN 5 of 2010 (Old No: CAN 7901 of 2010) are disposed of consequentially.
49. There will be no order as to costs.

50. Urgent photostat copies of this judgment and order, if applied for, be given to the parties upon compliance of all requisite formalities.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

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Ct No.16
02.12.2025
(SSS)