

AD-29&30
Ct No.16
25.03.2025
TN

FMAT 159 of 2024
IA No: CAN 1 of 2024

With

FMAT 436 of 2024

Sri Pratip Parua and others
Vs.
Sri Partha Pratim Parua and others

Mr. Somnath Roy Chowdhury,
Ms. Arpita Chowdhury

....for the appellants

In re: FMAT 159 of 2024
with
CAN 1 of 2024

1. The present challenge has been preferred against the grant of an ad interim order of *status quo*.
2. Learned counsel for the defendants/appellants argues that the ad interim injunction in the form of *status quo* granted by the impugned order is contrary to and beyond the scope of the relief of permanent injunction sought in the suit itself. Whereas in the suit, in prayer 'Kha', injunction has been sought in respect of the possession of the plaintiff, in the interlocutory injunction application, on the basis of which the ad interim order has been passed, the plaintiffs/respondents sought for injunction in respect of change of nature and character of the suit property.
3. Furthermore, learned counsel for the appellants takes the court through the reliefs sought in the suit as well as the two different schedules, that is, Schedules 'Ka'

and 'Kha', of the plaint and the injunction application. It is evident from the prayers of the plaint that the plaintiffs seek exclusive title in respect of the 'Ka' schedule property which is comprised only of plot no. 5166 whereas partition has been sought in respect of the entire property comprised of plot no. 5166 as well as plot no. 5169. Learned counsel argues that since the plaintiff claims exclusive title only in respect of plot no. 5166, the learned Trial Judge acted without jurisdiction and beyond the scope of the suit itself by granting *status quo* with regard to the other plot, that is, plot no. 5169.

4. Secondly, it is argued that the plaintiffs have not prayed for permanent injunction or *status quo* regarding change of nature and character of the suit property even in the reliefs of the plaint and, as such, the temporary injunction application went beyond the prayers of the suit itself.
5. Insofar as the first issue raised by the appellants is concerned, we find that although the plaintiff has claimed exclusive title over the 'Ka' Schedule property, in the same breath, the first relief of the plaint pertains to partition of the entire suit property, as depicted in 'Kha' schedule, which is comprised not only of plot no. 5169 but also plot no. 5166. Unless there is a partition, the entire property remains joint, despite the same being spread over different plots and as such, without a partition by metes and bounds,

every co-sharer has right, title and interest over every inch of the joint property. As such, although the prayer made in the temporary injunction application might not be in consonance with the second relief sought in the plaint, that is, permanent injunction, it is definitely in aid of the first relief of partition, which encompasses both the plots.

6. Insofar as the disparity between the permanent injunction sought in the plaint and the temporary injunction prayed for in the interlocutory injunction application is concerned, the same *ipso facto* does not vitiate the prayer in the temporary injunction application.
7. The permanent injunction sought in the suit would be a natural corollary of the first relief, which is partition. In the event the partition is granted, the property would then stand demarcated and a permanent injunction protecting the possession of the plaintiff regarding the demarcated 'Ka' schedule property would be the appropriate relief, whereas at the present stage, before such partition is effected, unless the entire property is protected, the ultimate outcome of the suit might be prejudiced and irreparable injury caused to the plaintiffs/respondents.
8. As such, we do not find any error or illegality in the impugned order of ad interim injunction sufficient to justify interference in appeal.

9. However, we make it abundantly clear that all the above observations have been made tentatively in respect of the present appeal which arises from an ad interim injunction order only and shall not be binding at any further stage of the suit and/or the injunction application and it will be completely open to the learned Trial Judge to decide the injunction application as well as the suit independently on merits, without being prejudiced in any manner by any of the observations made above.
10. In view of the above, FMAT 159 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 1 of 2024 stands dismissed as well.
11. The defendants/appellants shall file their written objection to the temporary injunction application in the trial court within a fortnight from date.
12. It is expected that the learned Trial Judge shall dispose of the injunction application as expeditiously thereafter as possible, positively by April 30, 2025.
13. There will be no order as to costs.

In re: FMAT 436 of 2024

14. Since FMAT 436 of 2024 has been preferred against the extension of the ad interim order of injunction which we have affirmed by the immediately preceding

order passed in FMAT 159 of 2024, as a consequence of the above order, FMAT 436 of 2024 is also dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

15. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)