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19.8.2025  
Ct. No. 16  
SB

FMAT 192 of 2025  
CAN 1 of 2025 (stay)  
Ujjwala Jain & Ors.  
Vs.  
Gopi Lal Garg & Anr.

Mr. Shailendra Jain  
Mr. Farhan Ghaffar  
Md. Zafar Jilani .... For the appellants.

Mr. Amitava Mukherjee  
Ms. Arpita Saha  
Ms. Antara Das ... for the respondents.

1. A preliminary point taken with regard to the maintainability of the suit itself as it has been disclosed in the affidavit-in-opposition that the plaintiffs have filed this partition suit suppressing the fact that there was an earlier partition suit being T.S. 72 of 2001 before the Court of learned Civil Judge, (Senior Division), 5<sup>th</sup> Court, Alipur on 03.5.2001. It is not in dispute that parties to the said partition suit are also parties to the present partition suit. The dispute which required to be canvassed in the present suit appears to be an agreement entered into on 15.1.2025 between the plaintiffs and the defendants. In the plaint it is alleged that the defendants refused and / or committed breach of his promise to sell his 50 % shares of the total land to the plaintiffs. This cannot form the basis of a partition suit. No interest in law accrues in favour of the plaintiffs to claim any right over the said property as a co-sharer which is essential ingredient in the partition suit.

2. The plaintiffs may be a co-sharer of the property. But the substance of the dispute appears to be a refusal on the part of the defendants to sell his remaining 50% shares.
3. On such consideration, the suit cannot be treated as a suit for partition as no declaration of share is possible at this stage in favour of the plaintiff without there being an adjudication at the first instance that there has been a concluded transaction between the plaintiff and the defendants.
4. On such consideration, we vacate the interim order.
5. However, this order shall not prevent the plaintiffs to institute appropriate proceedings for enforcement of the alleged draft deed for sale of 50% of the shares in the total land by the defendant to the plaintiff.
6. The plaintiff shall withdraw the suit being T.S. 237 of 2025.
7. Liberty is given to file a fresh suit.
8. In the event, the defendant propose to alienate his 50% share it shall be with sufficient notice to the plaintiff.
9. We make it clear that any future proceeding with regard to the enforcement of such alleged agreement shall be dealt with independently and any observation made in this order shall not influence or operate as *res judicata* in deciding such issues.
10. The appeal and the applications are disposed of.

(Soumen Sen, J.)

(Apurba Sinha Ray, J)