

Items- 11-08-2025
14&15.

Ct. 16

sg

FMA 921 of 2025

M/s. Kalim Estate Pvt. Ltd.
Versus
Dr. Kali Pradip Chaudhuri & Ors.

And

FMA 922 of 2025

M/s. Sheza Engineering & Construction Company
Versus
Dr. Kali Pradip Chaudhuri & Ors.

Mr. Anupam Kumar Bhattacharya
Mr. A.R. Hafiz
...for the appellant in FMA 921/2025
Mr. Sodhakar Thakur
Mr. Mritunjay Saha
Ms. Sana Sultana
... for the appellant in FMA 922/2025

1. Both the appeals are heard together as they involved common questions of law and facts and are arising out of a common order dated 7th May, 2025 passed by the learned Civil Judge (Senior Division), 10th Court at Alipore in an application filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure, praying inter alia for injunction and restraining the respondents from interfering with the possession and occupation of the plaintiff in the suit property.
2. The learned Trial Court has given chronology of dates and events in the first few pages of the impugned order which summarized full facts.
3. The suit was filed on 29th June, 2024 to protect the interest of the plaintiff on the basis of a deed of

indenture dated 1st July, 2021, registered before the Additional Registrar of Assurance-III, Kolkata, being Deed No. 00555. The said indenture dated 1st July, 2021, prima facie, shows that the defendant no.1 had transferred the suit properties in its entirety to the plaintiff. The considerations for the said transfer as recorded in the said deed are payments allegedly made by the plaintiff to the third parties, on behalf of the defendant no.1.

4. The dispute arose when the defendant no.1 had entered into a development agreement dated 11th May, 2022 with the defendant no.2 subsequent to the aforesaid agreement. There are allegations that the defendant no.1 notwithstanding the conveyance dated 5th November, 2022 in favour of the defendant no.2 are trying to transfer its share to the defendant no.3 by deed of conveyance dated 28th February, 2023. It is further alleged that the defendant no.1 entered into a further agreement for sale dated 2nd June, 2023 thereby agreeing to transfer another 15% undivided interest in the suit property to the defendant no.2.
5. On 1st September, 2023, the defendant no.1 also executed a memorandum of understanding dated 1st September, 2023 with the defendant no.2 wherein the defendant no.4 was the confirming party, in which it was inter alia agreed that the possession of the suit property would be given by 30th January, 2024 else penalty at the rate of Rs.10 lakh per month shall be imposed on the defendant no.1 till the possession was

given and no transaction are taken place concerning the said property without prior consent of the other parties.

6. It also purports to record that the possession of the part of the suit property in North West corner had already been given to the defendant no.2 and the defendant no.2 had already been permitted to depute security at the suit property. The series of agreements subsequent to the indenture dated 1st July, 2021 has created difficulty for the plaintiffs as in the suit it is alleged that they are trying to deny and disturb the possession of the plaintiff in the suit property and by virtue of the indenture dated 1st July, 2021, the plaintiff became the owner of the property.
7. So far as the contention raised with regard to the consideration amount paid upon the plaintiff by third parties as unrelated transaction not concerning with the suit property and that the plaintiff does not acquire any right under Section 53A of the Transfer of Property Act. It was further alleged that the plaintiff is not in possession of the suit property and the prayer of the plaintiff to restrain the defendant from transferring schedule B property is nonest in nature.
8. The contesting defendant before the learned Trial Court has alleged that the transfer between the defendant no.1 and plaintiff is fraudulent. There is a reflection of the said transfer in the subsequent deeds. The said deed was registered in violation of Section 32A of the Registration Act as the plaintiff kept registration proceeding pending for almost three years, which

clearly raised an important issue with regard to actual share of the plaintiff. The identification of the suit property was also raised before the learned Trial Judge. However, the plaintiff before the learned Trial Court contended that the balance of convenience and inconvenience lies in favour of passing an order in favour of the plaintiff as the deed disclosed by him in the said proceeding would show that the defendant no.1, in fact, had transferred the entirety of the suit property in favour of the present plaintiff.

9. It was submitted that all due process was taken as required for the registration of the deed (presentation). The deed was presented on 1st July, 2021 and nothing was left to be done by the plaintiff. The certificate enclosed with the deeds would also reveal that stamp duty and registration fees were paid in full on the given date. The effective date of transfer in the given facts and circumstances read with Section 47 of the Registration Act would be 1st July, 2021 as all the documents executed by the defendant no.1 in collusion with the defendant no.4 were made after that date.
10. It also transpired that in the proceeding before the learned Trial Court, the defendant nos. 2 and 3 have made direct allegation against the defendant no.1 and the defendant no.4 regarding their overt act and/or collusion with each other for the transaction as made out or execution of documents in favour of the defendant nos. 2, 3, 5, 6 and 7. The defendant no.2 raised strong objection against the development agreement dated 16th

October, 2023 with the defendant nos. 5, 6 and 7 in which the defendant nos. 5, 6 and 7 were included with defendant no.4 without having defendant no.2 being informed or mentioned only on the pretext that defendant no.2 had acquired 12.5% share in the suit property with encumbrance.

11. In this factual backdrop, the learned Trial Judge, considering the fact that the transaction between the plaintiff and the defendant no.1 was concluded on 1st July, 2021 and the counter-claim filed subsequent to the said transaction protected the interest of the plaintiff, disposed of the suit by directing the parties to the suit to maintain status qua in respect of their respective shares and in the suit property as mentioned in the schedule of the plaint as on the date of the impugned order.
12. It further appears that an application was filed under Order 39 Rule 7 of the Code of Civil Procedure which was fixed on 5th July, 2025.
13. On the basis of the narration of facts in the impugned judgment which we summarized read with the detailed analysis of facts which, prima facie, establishes a prima facie right in favour of the plaintiff, we are of the view that the plaintiff was able to make out a prima facie case and the balance of convenience also lies in faovour of passing ad interim order in favour of the plaintiff and hence, we are not inclined to interfere with the order passed by the learned Civil Judge (Senior Division), 10th Court, Alipore.
14. However, the observations are only for the purpose of

disposal of the appeal and shall not have any bearing in the final outcome of the suit.

15. The learned Counsel for the appellants, at this stage, have prayed for expeditious disposal of the application under Order 39 Rule 7 of the Code of Civil Procedure.
16. We request the learned Trial Court to dispose of the said application on merits within a reasonable time after giving an opportunity of hearing to the parties.
17. Both the appeals are, accordingly, dismissed. However, there shall be no order as to costs.
18. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)