

18.09.2025
SL No.19
Court No.1
(gc)

**FMA 1018 of 2025
CAN 1 of 2025**

**Sri Shyamal Roy alias Shyamal Kishore Roy & Ors.
Vs.
Sri Debaprasad Manna & Ors.**

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Ms. Monalisa Das,
Ms. Bipasha Bhattacharyya
...for the Appellants.

1. The appeal is arising out of an order passed by the learned Civil Judge (Sr. Divn), 1st Court, Tamluk, Purba Medinipur in connection with an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure read with an application under Order 39 Rule 7 of the Code of Civil Procedure. The appellants/plaintiffs filed a suit for declaration, partition and permanent injunction and had prayed for temporary injunction restraining the defendants from entering into the undivided dwelling house of the plaintiffs situated over 'Ka' and 'Ka/1' schedule property and from disturbing the peaceful possession of the plaintiffs and also from changing the nature and character till the disposal of the suit.
2. Admittedly, one Ramani Mohan Samanta was the original owner of the suit plots. According to

the plaintiffs, he constructed a dwelling house on the said plot. He had six daughters and the original plaintiff and the defendant no.5 are grandsons from the daughter of Ramani Mohan Samanta. Since Ramani Mohan Samanta had no son, the defendant no.6 used to reside at her parental house along with her husband and family. Subsequently, Ramani Mohan Samanta made a family settlement giving the entire suit plots to her grandsons, that is the original plaintiff, defendant no.5 and his wife, Hemangini Devi, giving each of them $1/3^{\text{rd}}$ share and it is submitted that defendant no.6 did not raise any objection to the said settlement. The original plaintiff used to reside over plot no.434 and defendant nos.5 and 6 used to reside over plot no.478. Subsequently, defendant no.5, being a law-clerk, managed to procure Municipal tax receipt and other documents and recorded the name of the defendant no.6 entirely with regard to the plot no.434 which is without any basis as the original plaintiff had $1/3^{\text{rd}}$ share therein. It is alleged that the defendant no.6, the daughter of Ramani Mohan Samanta, being instigated by defendant no.5 filed a title suit, being T.S. No.69 of 1985 against the plaintiff and obtained an ex parte decree against the plaintiff. Thereafter,

the principal defendants and defendant nos.5 and 6 in collusion with each other executed a sale deed dated 21.06.1986 with regard to the entire land in plot no.434 in the name of defendant nos.1 to 4 when the defendant no.6 had no authority to transfer such land and defendant nos.1 to 4 are stranger purchasers. It was further alleged that the defendant no.6 also executed a sale deed on 07.05.1984 with regard to suit plot no.478 in the name of Hemlata Roy and in turn, Hemlata Roy executed another deed of sale on 21.09.1986 in favour of defendant nos.2 and 3. A further deed of gift was executed by defendant no.6 in favour of the defendant nos.1 to 4 with regard to plot no.478 in collusion with the defendant nos.1 to 4. The defendant nos.1 to 4 are absolutely stranger in respect of undivided ancestral family dwelling house of the plaintiff. It is further alleged that Pijush Kanti Roy, the original plaintiff, was a co-sharer in respect of the suit plot no.434. There is a dwelling house over suit plot no.434 and 478 and the principal defendants are trying to disturb the peaceful possession of the plaintiff in respect of the said land. The defendant nos.1 to 4 are strangers and they have no right to claim any possession in respect of the said dwelling

house. The contesting defendants in their written objection had clearly stated that the plaintiffs are making unauthorized structure of plot no.478 and they tried to change the nature and character of the same wherein the defendants are purchasers against valuable consideration and co-sharers therein. In the said written objection, it has been clearly stated that Ramani Mohan Samanta, the original owner, constructed two separate houses over 5 decimals and 7 decimals of land in suit plot no.434 and 478 and the entire land in the said plots was thereafter recorded in the name of Ramani Mohan Samanta in the CSROR and upon his demise, his wife Hemangini and only daughter Bhusan Bala, i.e., the defendant no.6 inherited his properties and subsequently, Hemangini surrendered her share in suit plot no.434 in favour of her only daughter, Bhusan Bala, i.e., the defendant no.6 and plaintiff and his brother never had any right, title and interest over suit plot no.434.

3. It has been further claimed that with regard to the 7 decimals of land in plot no.478, Hemangini kept $1/3^{\text{rd}}$ share for herself and the remaining $2/3^{\text{rd}}$ share equivalent to $4-2/3$ decimals of land was surrendered by Hemangini in favour of the

sons of the defendant no.6, i.e. the original plaintiff, Pijush Kanti Roy and defendant no.5 had acquired a right by way of adverse possession therein for which the name of Bhusan Bala, i.e, defendant no.6 got recorded in respect of entire plot no.434 in the RSROR and plot no.478 got recorded in the name of Hemangini, Kanak Kanti Roy, i.e, defendant no.5 and the original plaintiff, Pijush Kanti Roy to the extent of $1/3^{\text{rd}}$ share each. Subsequently, on demise of Hemangini, her $1/3^{\text{rd}}$ share in plot no.478 devolved upon her daughter, Bhusan Bala, i.e. defendant no.6 which was recorded in her name along with original plaintiff and his elder brother, i.e., defendant no.5. thereafter, Bhusan Bala sold out $2-1/7$ decimals of land to Hemlata Roy in 1984 and she gifted $4/21$ decimals of land to defendant nos.1 to 4 and delivered possession in their favour with the knowledge of the original plaintiff. Subsequently, Hemlata Roy also transferred her property by way of sale to defendant nos.2 and 3 in the year 1986 with the knowledge of the plaintiff and delivered possession in their favour and as such, the defendants cannot be said to be stranger/purchasers and there is no undivided family dwelling house over plot

no.478 as alleged by the plaintiff. Moreover, execution case has already been filed against the plaintiff with regard to suit plot no.434 on the basis of judgment and decree of T.S. No.69 of 1985. On that basis, it was claimed that the plaintiff is no more co-sharer of the suit plot no.434 and as such, the instant suit as well as the application for temporary injunction is not maintainable.

4. The learned Trial Court on consideration of the aforesaid pleadings and after taking into consideration the judgment and decree passed in T.S. No.69 of 1985 refused to grant any order of injunction. The judgment and decree in T.S. 69 of 1985 shows that the decree of eviction has been passed against the original plaintiff, Pijush Kanti Roy, with regard to the entire land in suit plot no.434 which was decreed ex parte vide order dated 23.12.1991. The order of Misc. case no.09/2000 would also show that the application preferred by the original plaintiff under Order 9 Rule 13, CPC has been rejected on contest and the Misc. Appeal preferred against the same being Misc. Appeal No.01/2004 has also been rejected on contest. Moreover, the order passed in Misc. Appeal no.01/2004 has been affirmed in a civil revision

in this Court in C.O. No.2764 of 2004 and the Special Leave Petition preferred against the same being SLP no.7240 of 2022 has been dismissed by the Hon'ble Apex Court.

5. On the basis of the aforesaid finding, the learned Trial Court observed that the claim of the original plaintiff over plot no.434 has been denied in different proceedings which ultimately culminated in the order passed in SLP no.7240 of 2022. Having regard to such facts, in our view, the learned Trial Court was justified in not granting any relief to the plaintiffs in respect of plot no.478 inasmuch as the plaintiffs have failed to establish that there is an undivided family dwelling house of the plaintiffs and other co-sharers in which the principal defendants are the stranger/purchasers.
6. Having regard to the fact that the right of the plaintiffs in respect of suit plot no.478 has been consistently denied as would appear from various orders passed various stages and only a co-sharer on establishing a prima facie case that he still continues to be a co-sharer of the property in question, can claim an injunction which in this case stands nullified by the orders passed in earlier proceedings.

7. We are of the view that the learned Trial Court was justified in rejecting the application under Order 39 Rule 1 & 2 of the CPC and consequently was justified in refusing to allow the application under Order 39 Rule 7 of the CPC for local inspection ostensibly filed for inspection over suit plot nos.478 and 434 in order to find out that dwelling houses are there over the said plots and an observation was made by the learned Trial Court that the plaintiff having failed to establish any prima facie right over the suit property cannot be permitted to fish out evidence by way of local inspection.
8. On such consideration, the appeal and the application are dismissed.
9. However, there shall be no order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[Soumen Sen, C.J. (Acting)]

(Raja Basu Chowdhury, J.)