

Item No.- 28
02.04.2025
Rohan
Court No. 16

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**FMAT 267 of 2022
With
CAN 1 of 2024**

**Ananda Manna
Versus
Sadananda Manna & Ors.**

Mr. Sujit Banerjee,
Mr. Nilay Sengupta.

... for the appellant

Mr. Nilanjan Bhattarjee, Sr. Adv.,
Mr. Abhilash Chatterjee,
Mr. Saikat Dey.

... for the respondent No. 1

1. The present appeal has been preferred against an order whereby a temporary injunction application filed by the plaintiff/appellant in connection with a partition suit has been dismissed on contest.
2. Learned counsel for the appellant argues that the learned Trial Judge committed a legal error in refusing injunction on the ground that the suit is not maintainable for non-joinder of necessary parties on the premise that all the heirs of late Kedar Nath Manna, the paternal grandfather of the parties and the original owner of the suit property, have not been impleaded in the suit.

3. It is submitted that although late Kedar Nath Manna was the original owner of the property as per the pleadings, there was an oral mutual arrangement between Kedar Nath Manna and his heirs to the effect that the property of Kedar Nath Manna was separated and partitioned between the parties.
4. Learned counsel for the appellant further argues that the said oral arrangement was given effect to by the defendant No. 1 himself, who is the primary contesting defendant, by entering into a deed of gift, whereby he accepted the gift in respect of the share of one of the heirs of late Debendra Nath Manna, the father of the parties and one of the heirs of late Kedar Nath. It is submitted that by doing so, the defendant No. 1/respondent No. 1 virtually admitted and proceeded on the premise of the oral arrangement, thereby giving effect to it. Further, it is argued that from the records of rights, it is evident that the concerned suit properties have been recorded separately in the name of different heirs of late Kedar Nath Manna.
5. However, we find from the impugned order that the learned Trial Judge was justified in observing that despite having admitted that late Kedar Nath Manna was the original owner of the property, the appellant arbitrarily culled out a portion of the joint property, deeming the same to be demarcated, without any basis

for doing so. In fact, we find from the annexures to this stay application, which were also produced in the trial court, that the records of rights in respect of the suit property *prima facie* indicates the names of several heirs of the original owner Kedar Nath Manna as owners of the respective plots comprising the suit property, thereby raising a presumption that the property was never partitioned between the heirs of late Kedar Nath Manna. The case of the oral partition between the heirs of late Kedar Nath Manna, although pleaded in the plaint, is required to be proved on evidence. However, *prima facie* we do not find any support of such case from the records of rights.

6. Insofar as the deed of gift executed in favour of defendant No. 1/respondent No. 1 is concerned, we find from the recitals thereof that by virtue of the said deed, only a share of late Debendra Nath's portion out of the entire property was transferred. Thus, it cannot be said that by dint of accepting the gift, the defendant No. 1 admitted the previous oral partition.
7. In such view of the matter, since the learned Trial Judge has taken one of the plausible views in the facts of the case, we are not inclined to interfere with the impugned order.
8. Accordingly, FMAT 267 of 2022 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

9. Consequentially, CAN 1 of 2024 is also dismissed.

10. There will be no order as to costs.

11. It is made clear that nothing in this order shall prevent the appellant from impleading all the remaining heirs of late Kedar Nath Manna in the suit and to renew his prayer for injunction thereafter. If such fresh prayer is made upon impleadment of the heirs of late Kedar Nath Manna, it would be open to the learned Trial Judge to adjudicate on the same afresh without being unnecessarily influenced by any of the observations made above, keeping in view that the injunction application has been dismissed only on the ground of non-joinder of necessary parties.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)