

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMA No. 1229 of 2025
+
CAN 1 of 2025

Sri Saktipada Manna and another
-VS-
The State of West Bengal and others

For the appellants : Mr. Debasish Das,

For the State-respondents : Mr. Swapan Kr. Dutta, Ld. AGP.,
Mr. Pradyot Kr. Das.

Heard on : August 6, 2025 & August 7, 2025.

Judgment on : August 7, 2025.

Sabyasachi Bhattacharyya, J.:

1. Heard learned counsel for the parties.
2. The present challenge has been preferred against an order dated April 25, 2025 passed in WPA 5404 of 2018 whereby

the dispute raised by the petitioners regarding alleged encroachment of their shares of the disputed plot, that is, plot no. 117, was relegated to the Civil Court.

3. The petitioners/appellants purchased two decimals of land, out of three decimals in total, in plot no. 117. The said plot is the focal point of the dispute. Although the petitioners had also simultaneously purchased some property in the adjacent plot no. 117/1183, the same has not fallen for consideration in the present *lis*.
4. According to learned counsel for the appellants, from the sketch map furnished by the Block Land and Land Reforms Officer himself, as annexed at page 154 of the stay application filed in connection with the present appeal, which was a part of the affidavit-in-opposition filed by the State in the writ petition, it is clearly seen that despite only 167 square feet having been gifted by one of the original co-owners of the property, namely, Ananta Mondal to the State authority (the concerned Panchayat Samity), construction of a permanent nature has been made over 341 square feet. Thus, the said construction is evidently in excess of the share of Plot No. 117 gifted to the State authorities.

5. It is contended by the appellants that by logical deduction, the excess encroachment in plot no. 117 has been made on the shares of the other co-sharers.
6. Furthermore, the permanent construction also encroaches upon the adjacent road.
7. Learned counsel argues that without a proper procedure for acquisition having been undertaken, it was beyond the authority of the State to encroach upon the portion of the other co-sharers of plot no. 117 than its donor.
8. In the writ petition, relief was sought to the extent that the State is not empowered to encroach upon excess land without proper acquisition proceedings as well as for injunction restraining the State from making construction in excess of the portion of the property donated to them.
9. Learned counsel for the appellants submits that, however, during pendency of the writ petition, the permanent construction was completed over the encroached land. As such, it is argued that the State may be directed either to acquire the excess property by due process of law and pay appropriate compensation to the petitioners/co-owners, or to remove the unauthorized construction made over the said

property in excess of the portion gifted to the Panchayat Samity.

10. Learned counsel appearing for the appellants adds that since it is evident from the report of the Block Land and Land Reforms Officer, relied on by the State itself in its affidavit-in-opposition to the writ petition, that the State authority has encroached upon the shares of the appellants, as it constructed beyond the land gifted to it, the parties need not be relegated to a regular civil suit and the reliefs sought for can be granted on the admitted materials on record.
11. Learned Additional Government Pleader, appearing on behalf of the State-respondent, places reliance on the averments made in the affidavit-in-opposition filed by the State in connection with the writ petition and submits that upon physical verification, as apparent from the sketch map relied on by the appellants themselves, the actual area of the relevant plot, that is, plot no. 117 is about 4182 square link, although the area has been depicted in the records of rights as well as the concerned deeds as .03 acres. Therefore, the predecessors-in-interest of both parties were in occupation of

larger area than has been recorded in the records-of-rights and shown in the transfer deeds of both parties.

12. Learned Additional Government Pleader further argues that as such, all co-sharers, including the State authorities, have all along been in possession of the land in excess of their title deeds, since the actual possession which was handed over to the State by Ananta Mondal, its donor, was in excess of the property indicated in the deed of gift, which was originally in possession of the said donor.
13. In any event, it is argued that if the excess occupied areas of all the co-sharers are taken into account, the appellants are still in possession of 2.3 decimals of land in plot no. 117 even after setting apart the constructed area, which is commensurate with the portion/share purchased by the appellants.
14. Secondly, it is argued that the entire plot is jointly owned by the appellants, along with other co-sharers including the State authority and the State authority, by dint of its gift deed, has become a co-sharer of the property. In the absence of specific demarcation or partition of the entire land by metes and bounds, it is argued that no particular co-sharer can claim

exclusive title or possession over a particular portion of the property. Thus, the allegation that the “appellants’ portion” of the property has been encroached by the State is based on misconception of law.

15. Upon hearing learned counsel for the parties, we find that it is evident from the sketch map, which has been relied on by both parties, that although the records of rights indicate that plot no. 117 is of 3 decimals area, the actual area of the plot, which was transferred to the parties and in their possession, as found from the mouza map, is more, that is, 4086 square link.
16. The constructed area, that is, a public waiting room, has been shown to be of 450 square link area on plot no. 117 and 109 square link on the adjoining road.
17. Thus, it is clear that if the actual possession of the parties and their predecessors-in-interest is taken into account, the appellants are still in occupation of their share of the concerned plot, which was transferred in their names.
18. Secondly, the question of a particular portion of the property exclusively belonging to the appellants being encroached by the State does not arise, for the simple reason that in the

absence of any proper partition by metes and bounds, either by a partition decree or by a registered deed of partition, all parties, including the State authority as well as the appellants, remain co-sharers of the property.

19. Thus, by legal fiction, every co-sharer has right, title and interest over every inch of the property and consequentially, possession of one co-sharer is deemed to be held on behalf of all.

20. Hence, the very premise of the writ petition, to the effect that the specific and exclusive portion of plot no. 117 belonging to the appellants has been encroached, cannot be decided outright without taking any evidence and going into the facts of the case upon documentary evidence as well as oral deposition being adduced.

21. Moreover, insofar as the actual area of the plot is concerned, there is palpable discrepancy between the mouza map and the report of the Block Land and Land Reforms Officer's report on the one hand and the parties' title deeds and RS records on the other hand.

22. Unless such discrepancy is resolved, it cannot be ascertained as to whether the petitioners are still in physical

possession of the extent of plot no. 117, which was sold to them. If it is proved to be so, then the allegation of encroachment would be belied.

23. These issues, being either questions of fact or, at best, mixed questions of facts and law which are to be resolved by an appropriate civil suit upon trial on evidence, cannot be decided by the writ court, being complex and disputed questions of fact.

24. By virtue of the impugned order, the learned Single Judge, upon discussing all facets of the matter and the rival arguments of parties, was pleased to observe that there would be no justification to entertain the present disputes between the co-sharers of plot no. 117 in the writ jurisdiction and the petitioners may approach the Civil Court for desired relief.

25. We are *ad idem* with the said observation and conclusion of the learned Single Judge in view of the discussions as made above.

26. Moreover, in an intra-court appeal, the Court has to be cautious as to there being no interference unless there is a gross illegality and / or material perversity tainting the impugned order.

27. We find that on a preponderance of probability, one of the plausible views on the available facts was taken by the learned Single Judge.
28. As such, there is no scope of interference in an intra-court appeal on such count as well.
29. Accordingly, FMA No. 1229 of 2025 is dismissed on contest, thereby affirming the judgment and order dated April 25, 2025 passed in WPA 5404 of 2018.
30. CAN 1 of 2025 is accordingly disposed of as well.
31. There will be no order as to costs.
32. It is made clear that the merits of the rival contentions of the parties have not been entered into by this Court and it will be open to the parties to resolve their disputes by filing an appropriate civil suit before the competent Civil Court.
33. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)