

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.M.A.T 311 of 2023
IA No: CAN 1 of 2023

Sri Chittaranjan Bhattacharya and others
Vs.
Sri Taraknath Bhattacharya

For the appellants : Mr. Sarbananda Sanyal
For the respondent : Mr. Soumik Ganguli
Heard on : 05.05.2025
Judgment on : 05.05.2025

Sabyasachi Bhattacharyya, J.:-

1. The appeal involves questions of fact and of law and as such is hereby admitted for being heard on all the grounds taken in the Memorandum of Appeal.
2. On consent of parties, the connected stay application and the appeal are taken up together for hearing.
3. Learned counsel for the appellants submits that although the schedule of the plaint mentioned only one L.R. Dag, bearing no.365/1032, in the injunction application, an additional plot

being no.1258 was inserted and injunction obtained on the same.

4. As such, the injunction granted by the impugned order is beyond the plaint prayers.
5. Secondly, it is contended that the appellants have been residing in a mud hut on one of the portions of the suit premises.
6. It has been pleaded in the written objection of the appellants in the court below to the injunction application that on oral consent of all the other co-sharers, the appellants have been residing in such portion.
7. Since in view of the marriage of the son of defendant no.3 and children having been born, the requirement for further rooms came up, a *pucca* construction adjacent to mud hut was started by the appellant.
8. After construction was made substantially in respect of the ground floor, but before the roof of the said floor was cast, the present suit was filed and an injunction obtained by the plaintiff/respondent.
9. It is submitted that as such, the balance of convenience and inconvenience as well as equity lies in favour of permitting the appellants to complete the construction.
10. However, it is submitted that in the event the suit is ultimately decreed against the appellants or the portion on which the construction is made is not allotted to the appellants, the

appellants are agreeable to appropriate orders being passed with regard to the construction.

- 11.** Learned counsel for the appellants cites *Mandali Ranganna and others vs. T. Ramachandra and others* reported at (2008) 11 SCC 1, for the proposition that grant of injunction is an equitable relief and a person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction.
- 12.** Learned counsel for the plaintiff/respondent submits that insofar as the insertion of the additional Dag/plot in the schedule of the injunction application is concerned, the respondent is agreeable to the said portion of the injunction being set aside.
- 13.** However, by placing reliance on the averments made in the plaint and the injunction application, learned counsel for the plaintiff/respondent submits that the plaintiff/respondent has categorically averred that from the inception of the attempts by the appellants to make such construction, resistance have been put up by the plaintiff/respondent.
- 14.** As such, the ratio laid down in the cited judgment does not apply to the present case.
- 15.** Upon considering the materials before us, we find that the plaint schedule incorporates only one plot no. bearing 365/1032 at the relevant Mouza whereas in the injunction application an

additional plot bearing no. 1284 has been incorporated and injunction has been granted by the impugned order in respect of both the plots.

- 16.** As such, insofar as the prayer made in the injunction application with regard to the additional plot is concerned, learned counsel are justified in submitting that the said part of the injunction application ought to be modified by restricting the injunction granted to the suit plot no.365/1032.
- 17.** However, with regard to the second contention of the appellants, although the appellants have sought to impress upon the court that the plaintiff has made construction on his portion of the property and is now resisting the defendants/appellants from constructing on the defendants' portion in turn, we do not find any such averment having been made in the written objection filed by the defendants/appellants in the court below.
- 18.** Also, there is no specific mention of the date from which the construction was started in the written objection filed by the defendants/appellants in the court below.
- 19.** Rather, in the plaint as well as the injunction application, it has been categorically averred that the plaintiff has been resisting the attempted construction from its inception and ultimately filed the suit.
- 20.** Hence, the ratio laid down in *Mandali Ranganna (supra)* is not applicable.

- 21.** In the said case, it was held that a person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction.
- 22.** As opposed to the said case, we do not find any foundational ingredient even in the defendants/appellants' pleadings in the court below to justify the contention that the plaintiff had sat tight for a long time and allowed the defendants to make such construction.
- 23.** That apart, in normal circumstances, one of the co-sharers cannot be permitted to make a construction over his or her chosen portion of the joint property since each and every co-owner has right, title and interest over every inch of the joint property.
- 24.** As such, we do not find any illegality or irregularity in the order of the trial court necessitating us to interfere.
- 25.** It is trite law that even if an alternative view is possible on the materials-on-record, the appellate court does not substitute its own views for that of the trial court merely because such second view is possible, unless there is some palpable illegality in the impugned order of the trial court.
- 26.** Thus, we do not find otherwise any such illegality in the impugned order apart from that regarding the additional plot as indicated above.

- 27.** Hence, FMAT 311 of 2023 is allowed in part, thereby modifying the impugned ad interim injunction order and restricting the operation of the same to the suit plot bearing LR Dag no.365/1032 and further holding that the operation of the injunction, insofar as the additional plot, being LR Dag no.1284, is concerned, is hereby set aside.
- 28.** It is made clear that the findings rendered above and in the impugned order are tentative, for the purpose of the suit and the learned trial Judge shall be at liberty to decide the suit independently in accordance with law without being influenced in any manner by any of the observations made herein.
- 29.** Needless to mention, nothing in the above order precludes either of the parties to seek subsequent variation/modification of the impugned order in the event the parameters of Order XXXIX Rule 4 of the Code of Civil Procedure are satisfied.
- 30.** CAN 1 of 2023 is also disposed of accordingly.
- 31.** There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)