

D/L.14.
November 24, 2025.
MNS.

FMAT No. 289 of 2025
+
CAN 1 of 2025
+
CAN 2 of 2025

Sri Nimailal Pradhan
Vs.
Sri Nanda Dulal Pradhan @ Nandalal Pradhan
and others

Mr. Amit Baran Dash

... for the appellant.

Mr. Suman Das

...for the respondents.

Re : CAN 1 of 2025 (condonation of delay)

1. The affidavit-of-service filed in Court today be kept on record.
2. The explanation for the delay furnished in respect of filing the appeal in CAN 1 of 2025 is that on the date on which the impugned order was passed, that is, August 6, 2024, the matter was fixed for hearing of an application under Order XXXIX Rule 7 of the Code of Civil Procedure (Code) and as such, the appellant/petitioner was not aware that the injunction application itself would be taken up for disposal.
3. Even, otherwise, the injunction application was dismissed on that day by the impugned order, which was not intimated to the appellant by his learned Advocate or his clerk in the trial court. Only in the first

week of May, 2025, when the defendants tried to change the nature and character of the suit property, the appellant approached his learned Advocate in the trial court and upon proper search came to know that the impugned order has been passed dismissing the injunction application.

4. Learned counsel appearing for the respondents opposes the prayer for condonation and submits that proper explanation for the delay has not been given in the application.
5. However, from paragraph nos. 5 and 6 of the application, we find plausible explanations having been furnished, particularly in view of the fact that the appellant comes from a rural area and is a cultivator and, as such, might not have been expected to know the nuances of the law and was dependent on his learned Advocate in the trial court and his clerk entirely.
6. Accordingly, CAN 1 of 2025 is allowed, thereby condoning the delay in preferring FMAT No. 289 of 2025.
7. There will be no order as to costs.
8. Accordingly, we take up the appeal for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
9. In view of both questions of law and fact being involved, we admit the appeal to be heard on the grounds taken in the Memorandum of Appeal.
10. Since the conspectus of the appeal is extremely brief, we take up the appeal along with the application for

final hearing, upon intimating learned counsel for the parties, in order to save the parties the agony of an unnecessarily long-drawn litigation.

11. The present appeal arises out of an order whereby the plaintiff/appellant's application for temporary injunction was dismissed.

12. The suit is one for partition. The learned trial Judge, in the impugned order, arrived at the finding that the plaintiff has *prima facie* been able to prove that the plaintiff has acquired the 'Ka/1' schedule property, which is a part of the 'Ka' schedule property (suit property) and the said portion has been recorded in the name of the plaintiff. However, despite having so held, it was observed that other documents like plot information etc. in respect of the entire 'Ka' schedule property was not produced.

13. Upon hearing learned counsel for the parties, we find that the plaintiff, even as per the trial court, has made out a *prima facie* case at least to the extent that the plaintiff is the owner of a portion of the property. In the absence of any *prima facie* proof of partition having been effected or that the suit property has been clearly demarcated and partitioned by metes and bounds by any of the modes known to law, all the parties, including the plaintiff and defendants, are co-owners of the property and as such ought not to be permitted to alter the nature and character or the ownership of the property during pendency of the suit, since any such

alteration might ultimately prejudice the rights of the parties at the time of final hearing of the suit.

14. Accordingly, we are of the opinion that the trial Court erred in law in refusing injunction.

15. Hence, FMAT No. 289 of 2025 is allowed on contest, thereby setting aside the impugned order no. 19 dated August 6, 2024 passed by the learned Civil Judge (Senior Division), First Court at Contai, District- Purba Medinipur, in Title Suit No. 781 of 2021 and allowing the temporary injunction application filed by the appellant in the trial court by restraining both parties by an order of *status quo* from changing the nature and character of the suit property and/or from transferring, alienating and/or encumbering the suit property in favour of any third party in any manner and/or from disturbing each other's possession with regard to the suit property, all till disposal of the suit itself.

16. It is expected that the suit, being of the year 2021, shall be disposed of as expeditiously as the business of the trial court permits, preferably within eight months from the date of communication of this order to the trial court.

17. CAN 2 of 2025 is consequentially disposed of as well.

18. There will be no order as to costs.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)