

AD -42
Ct No.10
17.06.2025
(SSS)

FMA 470 of 2025
With
CAN 1 of 2024

Syed Musaraf Hossain @
Sayed Musaraf Hossen
Vs.
Sri Sukumar Poriya and Ors.

Mr. Satyendra Agarwal,
Mr. Tarak Nath Sarkar
....For the Appellant.

Mr. Rabindra Nath Mahato
Mr. A. S. Ray
...For the Respondent no. 1.

1. Learned Counsel for the appellant submits that the learned Trial Judge, while passing the impugned order dismissing the plaintiff/appellant's temporary injunction application, overlooked the fact that the Record of Rights stands in the name of the appellant and his predecessor-in-interest.

2. It is submitted that the impugned purported sale deed was executed allegedly in the year 1965 and in the event the same was authentic, the transferees/his successors-in-interest, that is, the present defendants/respondents, would have acted on the said sale deed and taken steps to correct the Records of Rights by incorporating their own names.

In the absence of the same, it is argued that the existence of the sale deed itself is vitiated.

3. Secondly, it is argued that the vendor in the purported sale deed, being the predecessor-in-interest of the present plaintiff/appellant, was literate, which is borne out by her signature put on the plaint of a partition suit, which was produced in the court below. Yet, in the impugned sale deed, she allegedly put her left thumb impression, which itself casts doubt on the execution of the same.

4. Moreover, the learned Trial Judge failed to consider the fact that although the vendor of the impugned deed allegedly affixed her thumb impression on it, there is no statement contained therein that the contents of the said sale deed were read over and explained to her. It is submitted that in view of the above, a strong prima facie case for grant of injunction has been made out.

5. Learned Counsel appearing for the contesting respondent no. 1 submits that the suit itself is not maintainable in its present form, which hits at the very root of the prima facie case pleaded by the plaintiff/appellant. It is pointed out, by handing over to us a copy of the written objection to the injunction application filed in the trial court by the respondent no. 1, that it was specifically pleaded therein that the suit was bad for non-joinder of necessary parties, since the heirs of the deceased Saradindu Samanta,

one of the successors of the transferee in the 1965 deed, were not impleaded.

6. Moreover, by placing reliance on the averments made in paragraph no. 4 of the plaint, it is argued by the learned Advocate for the respondent no. 1 that the plaintiff admitted the possession of the defendant/respondent no. 1 in respect of the suit property. However, despite the same, no relief of recovery of possession, which was a necessary consequential relief required to be sought along with declaration of title, was prayed for in the plaint.

7. Thus, the suit is barred under the proviso to Section 34 of the Specific Relief Act, 1963.

8. Although we find from the impugned order that the same does not deal with the aforesaid objections of the respondent no. 1, it cannot be said that the said objections are new factual aspects brought before this court for the first time, since such facts are borne out respectively by the averments made in the written objection of the respondent no. 1 to the injunction application in the court below as well as from the averments of the plaintiff/appellant in the plaint itself, both of which were before the learned Trial Judge while passing the impugned order and ought to have formed a part of the consideration in the impugned order.

9. Thus, although we find that an arguable case has otherwise been made out by the

plaintiff/appellant and the appeal is accordingly admitted for hearing on the grounds as taken in the memorandum of appeal, in view of the points involved in the connected injunction application being co-extensive with the those involved in the appeal itself, instead of unnecessary keeping the appeal pending, we decide to take up the appeal itself for hearing.

10. In view of the above findings, this court is of the opinion that the learned Trial Judge was justified in dismissing the injunction application of the plaintiff/appellant, although on grounds different from those attributed in the impugned order, which we have enumerated above. Thus, there is no scope of this court, sitting in appeal, to interfere with the conclusion arrived at by the learned Trial Judge, which we concur with, although on different grounds than those recorded by the learned trial Judge, as indicated hereinabove.

11. Accordingly, FMA 470 of 2025 is dismissed on contest. Consequentially, CAN 1 of 2024 is also dismissed.

12. There will be no order as to costs.

13. It is, however, made clear that this court has not conclusively decided the contentions of the parties insofar as the suit is concerned and it will be open to the learned trial court to decide the suit independently on its own merits without being influenced in any manner by any of the observations

made above. It is further clarified that nothing in the above order shall prevent the plaintiff/appellant from taking appropriate steps in connection with the suit if the appellant so deems fit.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)