

M/L.45.
June 9, 2025.
MNS.

FMA No. 235 of 2025
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CAN 1 of 2024

Safatulla Sk. and others
Vs.
Sahera Bibi and others

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Mr. Saikat Gayen

... for the appellants.

Mr. Manas Kumar Das

...for the respondent nos. 1 to 6.

1. Paper books filed in Court today be kept on record.
2. The present appeal has been preferred against an order of temporary injunction, couched as a status quo order, in respect of the nature, character and possession of the suit property.
3. Learned counsel for the defendants/appellants submits that the plaintiffs' predecessor-in-interest had transferred his half share of suit plot no. 3662 and as such the plaintiffs were not entitled to injunction in respect of the said plot in any event, nor could the plaintiffs incorporate the said plot within the hotchpot of the partition suit.
4. Insofar as plot no. 12783, the other suit plot, is concerned, it is submitted that there was amicable partition between the parties and the entire plot was allotted in favour of the predecessor-in-interest

of the defendants, as reflected in the extracts of the records of rights produced in the court below. Thus, the partition suit is not maintainable at all at the behest of the plaintiffs/respondents and the plaintiffs/respondents were not entitled to any injunction.

5. Learned counsel appearing for the plaintiffs/respondents submits that mere recording of name of the defendants in the RS Records of Rights does not indicate automatically that amicable partition was effected in respect of the suit plot.
6. Insofar as plot no. 3662 is concerned, it is argued that it is a debatable question as to whether the half share of the plaintiffs' predecessor was transferred in the name of the defendants and as such, during pendency of the suit, the learned trial Judge was justified in granting an order of status quo.
7. Upon a careful consideration of the materials on record, we find that in the impugned order itself, the learned Trial Judge recorded that insofar as suit plot no. 3662 is concerned, a registered deed of transfer has been produced by the defendants/appellants to show that the predecessor-in-interest of the plaintiffs, namely, Younus Sk. transferred his share in the said plot in favour of Eskar Hossain, the predecessor-in-interest of the defendant no. 3.

8. Since the suit property is comprised of two separate and distinct plots, being no. 3662 and no. 12783, we cannot club the two notionally merely because both have been thrown into the common hotchpot of the subject-matter of the partition suit by the plaintiffs at their own choice.
9. Insofar as plot no. 3662 is concerned, the same is a distinct and different plot and since there is strong *prima facie* evidence that the entire half share of the plaintiffs' predecessor was transferred in favour of the other co-owner, that is, the predecessor-in-interest of the defendants in respect of the said plot, which is borne out by the registered deed produced in the court below, we are of the opinion that the learned trial Judge erred in law in granting status quo in respect of plot no. 3662.
10. However, with regard to plot no. 12783, it is arguable as to whether the same was amicably allotted to the defendants' predecessor exclusively. Such a case, as made out in the written objection of the defendants/appellants, in respect of alleged amicable partition, has to be made out and established by cogent evidence by the defendants/appellants at the trial of the suit itself. Merely because the name of the predecessor of the defendants was recorded in the RS Records of Rights does not automatically indicate ouster of the defendants, who were admittedly co-sharers

thereof prior to such recording, from the said plot and/or the factum of alleged amicable partition having been effected by allotting the entire plot no. 12783 to the predecessor-in-interest of the defendants/appellants.

11. Since an arguable and triable issue has been made out in respect of plot no. 12783, it would only be prudent if at this stage such status quo is maintained with regard to the same as rightly directed by the learned Trial Judge.

12. Thus, although the reasoning in the impugned order is somewhat cryptic, the conclusion of the learned trial Judge, insofar as plot no. 12783 is concerned, is borne out by sufficient materials on record.

13. Accordingly, FMA No. 235 of 2025 is partially allowed on contest, thereby modifying the impugned order, bearing no. 14 dated June 20, 2024 passed by the learned Civil Judge (Senior Division), at Kandi, District- Murshidabad in Partition Suit No. 173 of 2023 to the effect that the parties are hereby directed to maintain status quo in respect of nature and character of plot no. 12783, which is a part of the suit property, till disposal of the suit.

14. However, the status quo order in respect of the other part of the suit property, that is, plot no. 3662 is hereby vacated.

15. It is made clear that the above findings and observations have only been arrived at for the limited purpose of adjudicating the injunction application and shall not be considered to be binding at any further stage of and/or the final hearing of the suit.

16. The learned trial Judge shall be at liberty to adjudicate all issues involved, including those which have been touched upon in the above order, at the time of final hearing of the suit independently without being influenced in any manner by any of the observations made herein or in the impugned order.

17. Consequentially, CAN 1 of 2024 stands disposed of as well.

18. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)