

Item-
26. 22-09-2025

**FMAT 378 of 2025
CAN 1 of 2025**

sg Ct. 1

Jyotirmoy Ghosh & Ors.
Versus
Suman Forwarding Agency Pvt. Ltd. & Anr.

Mr. Bikramjit Dutta
Ms. Kausiki Bose
Mr. Dipankar Bhakta

...for the appellants

1. The affidavit of service filed in Court is taken on record.
2. In spite of service, the respondents are not represented.
3. It appears that Kalipada Ghosh and Panchanan Ghosh are the co-sharers in respect of the lands in question. RSROR of the suit property filed by the plaintiffs has revealed such fact. But it is not quite clear whether the heirs of Panchanan had sold their share in favour of the respondent nos. 1 and 2. The plaintiffs have not filed any suit for partition. Merely because some portion of the land has been recorded in their names does not confer an exclusive right to the said property. However, it only shows that they are in possession or have possessory right over such plot/plots.
4. It is alleged that there has been encroachment with regard to the plots under their occupation. However, in the absence of any clear idea about the respective position of the parties in the suit plots, any order of injunction at this stage is likely to create confusion in future.
5. The documents appearing from pages 61 to 64 would show that they are in possession of the decimals of land mentioned in the LRROR. The plaintiffs are the

absolutely owners of 16 anas of the land comprised in LR Dag Nos. 35/1690, 22/1688 and 22/1689 and the opposite parties have not purchased the same from the plaintiffs.

6. Prima facie, the possessory right of the plaintiffs in respect of the said dag numbers are established. However, it is alleged that there has been encroachment. In the month of March, 2025, the opposite parties started putting boundary walls over the adjacent properties of the plaintiffs and in the month of May 2025, they have encroached in respect of the Schedule-A suit property.
7. In order to ascertain whether an encroachment in the entire Schedule-A suit property, a report from the Advocate Commissioner is required. However, we feel till such exercise is being carried out, the possession of the appellants in respect of the LR Dag Nos. 35/1690, 22/1688 and 22/1689 shall not be disturbed for a period of 10 weeks from date.
8. Since the respondents are not represented, a copy of this order shall be immediately communicated to the respondents by speed post with acknowledgment due.
9. It would be open for the appellants to take out an appropriate application before the learned Trial Court for appoint of an Advocate/Survey Commissioner upon prior notice to the respondents.
10. In the event such application is filed, we request the learned Trial Judge to decide the said application along with the injunction application by preponing the date of the hearing of the injunction application and upon giving a reasonable opportunity to both the parties.

11. With the aforesaid directions, the appeal and the application are, accordingly, disposed of.
12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

[Soumen Sen, C.J. (Acting)]

(Apurba Sinha Ray, J.)