

10.12.2025
Ct. No. 06
Sl. No.67
skg

C.O. No. 3463 of 2025

Magnet Construction Pvt. Ltd. & Anr.
Vs.
Abdul Kalam & Ors.

Mr. Haradhan Banerjee,
Md. Nurul Haque,
Sk. Afrojul Haque,
Mr. Nilmony Das,
Mr. Suresh Kumar Sahoo,

.....for the petitioner

Mr. Partha Pratim Roy,
Mr. Partha Chakraborty,
Mr. Rishabh Dutta,

...for the opposite party

1. The judgment dated August 8, 2025 passed by the Addl. District Judge, South 24 Paraganas at Alipore in Misc. Appeal No. 180 of 2023, is under challenge , at the behest of the defendant Nos. 5 and 6 in Title Suit No. 771 of 2023.
2. By the order impugned, the learned court reversed the order of the learned trial judge who had refused to grant an ad interim order of injunction which was prayed for by the opposite parties/plaintiffs in Title Suit no. 771 of 2023. The learned trial Judge held that the plaintiffs, in support of their claim over the land, had filed one record of rights in the name of their predecessor. The record of rights was not a document of title, but only a document of possession. The

plaintiffs admitted that the suit property was sold to the defendant nos. 5 and 6, by a registered sale deed and they were constructing on the suit property. According to the learned trial judge, a registered deed of sale had a presumption of correctness, until rebutted by cogent evidence. The plaintiffs did not file any document to show invalidity of the deed. Moreover, as the defendants had already started construction on the suit property and had accumulated materials, it would be wasteful if those materials would lie unused in the suit property. Thus, considering the balance of convenience and inconvenience, the learned trial judge refused an order of ad interim injunction.

3. It is an admitted position that, the plaintiffs are not in possession of the property. The contention of the plaintiffs was that, the deed of sale was registered in the name of a dead person, which was denied by the defendant. Aggrieved by the order of the learned trial judge, a Misc. Appeal was preferred. The appellate court was of the view that the issue of validity of the sale deed executed by the power of attorney holder was a complex issue and the outcome of the same would depend on the specific facts and circumstances which could not be decided without trial. Further observation was that, the issue of limitation was also triable. The fact of knowledge of the plaintiffs regarding

execution of the sale deed in the name of a dead person was to be determined at the time of trial. Upon holding all these issues to be triable, the learned appeal court proceeded to grant an interim order of injunction in the nature of status quo with regard to nature, character and possession. The clear case of the defendant Nos. 5 and 6 was that, a prior suit was filed by the plaintiffs in respect of 17 decimals. The defendant Nos. 5 and 6 claimed title over 13 cottahs within those 17 decimals. The construction by the defendants/petitioners had been continuing for long by obtaining a sanction plan. In the earlier suit, injunction was refused. The refusal of injunction in the earlier suit was suppressed. The decision of the court in the Misc. appeal was in conflict with the order passed in the earlier suit.

4. Under such circumstances, this court modifies the order of status quo granted in the Misc. Appeal to the extent that the construction will continue strictly as per the sanction plan over the land in which the same was going on, but no third party interest will be created. The learned trial judge is directed to dispose of the injunction application within a period of 2 months from the next date fixed. The learned Appellate court had misconstrued the scope of the miscellaneous appeal which was from a refusal to grant an ad interim order of injunction against the

defendants, without hearing the defendants. The appeal court did not assign any reason as to why the injunction in the nature of status quo should be granted and how the learned Trial Judge had erred. Prima facie case, balance of convenience and inconvenience, maintainability of the suit, limitation etc. were held to be triable issues, but still the order was passed even after acknowledging that the earlier order of refusal to grant injunction in the prior suit had been suppressed in the later suit.

5. The injunction application shall be heard expeditiously and disposed of without granting unnecessary adjournments. The court shall not be influenced by any observation made in this order. The construction shall abide by the result of the injunction application.
6. The revisional application is accordingly disposed of.
7. There shall be no order as to costs.
8. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)