

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And**

The Hon'ble Justice Md. Shabbar Rashidi

FMAT 442 of 2024

With

IA No.: CAN 1 of 2024

Lakshmi Asset and Land LLP

Vs.

Abdur Rouf & Ors.

For the appellant : Mr. Surajit Nath Mitra, Ld. Sr. Advocate
Mr. Saunak Sengupta, Advocate
Mr. Soumyadeb Sinha, Advocate
Mr. Suranjan Chatterjee, Advocate

For the respondent no.1 : Mr. Ramdulal Manna, Advocate
Ms. Manju Manna (Dey), Advocate
Mr. Sayan Mukherjee, Advocate

Heard & Judgment on : January 29, 2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a plaintiff of suit for declaration and injunction.

2. Appeal is directed against an order dated October 8, 2024 passed in Title Suit No.1424/2024 by the learned 7th Civil Judge, Sr. Division at

Alipore, refusing to grant *ad interim* injunction as prayed for by the appellant.

3. Learned Senior Advocate appearing for the appellant submits that, the appellant is the owner of the immovable property is concerned. He draws the attention of the Court to the findings recorded by the learned Judge in the impugned order. He submits that, although, the learned Judge finds a *prima facie* case being made out, learned Judge did not return any adverse finding on the other parameters of balance of convenience and irreparable loss as against the plaintiff but proceeded to deny the grant of *ad interim* order of injunction as prayed for by the plaintiff.
4. Defendant No.1 is represented.
5. Learned Advocate appearing for the defendant no.1 submits that, the learned Trial Judge rightly refused to pass *ad interim* order of injunction in view of the earlier order of the Hon'ble Supreme Court. He submits that, the Hon'ble Supreme Court directed the learned Trial Judge to consider all aspects without being influenced by any observations made either by the High Court or the Hon'ble Supreme Court.
6. We find from the records that, in a suit for declaration and injunction, the plaintiff prayed for an *ad interim* order of injunction restraining the defendant no.1 from creating, selling, alienating and/or parting with

possession and/or creating any third-party rights over and in respect of suit property.

7. Learned Trial Judge noted the contentions of the appellant. Learned Trial Judge returned a finding that, there is a *prima facie* case made out by the plaintiff to go to trial. However, learned Single Judge refused to grant any *ad interim* order of injunction in view of the defendant no.1 possessing a registered document of title.
8. The immovable property involved in the suit is claimed to be sold to the defendant no.2 which is a chit fund company.
9. Affairs of the defendant no.2 was taken over by the defendant no.3 pursuant to the order of the Court. Defendant no.3 put up the assets of the defendant no.2 for sale being the suit property. In such sale proceedings defendant no.1 purchased the suit property concerned. A registered deed was executed in favour of the defendant no.1.
10. The registered deed spoken of by the learned Single Judge in the impugned order in favour of the defendant no.1 is such Deed of Sale.
11. The title to the immovable property concerned will depend upon whether or not, defendant no.2 received any right, title and interest over and in respect of the suit property, by virtue of its purchase, in order to enable the defendant no.3 to put up the same as an asset of the defendant no.2 for sale, and sell it.
12. Such issues are required to be decided at the trial. *Prima facie* case, therefore, stands made out by the plaintiff to go to trial as noted by the

learned Single Judge. So far as balance of convenience and inconvenience is concerned, the plaintiff claims to be in possession of the suit property. In any event, allowing the defendant no.1 to create any third-party interest over and in respect of suit property in any manner whatsoever will vitiate against the requirement to protect and preserve the suit property. *Prima facie* case, balance of convenience and irreparable loss principles are in favour of the appellant for grant of *ad interim* order as prayed for.

13. In course of hearing today, defendant no.1 did not produce any materials to suggest that, the balance of convenience or the consideration of irreparable loss is in favour of the defendant no.1.
14. In response to a query of the Court, learned Advocate appearing for the defendant no.1 submits that, the defendant no.1 does not intend to sell, alienate, encumber and/or part with possession or create any third-party interest over and in respect of the suit property concerned in any manner whatsoever.
15. In the view of the discussions above, it would be appropriate to grant an *ad interim* order of injunction restraining the defendant no.1 from selling and/or alienating and/or encumbering and/or parting with possession and/or creating any third party rights or interests over and in respect of the suit property in any manner whatsoever.
16. Learned Advocate appearing for the defendant no.1 also submits that, no notice of the injunction application or of the suit was served upon

- the defendant no.1. He seeks an opportunity to oppose the application for injunction and file written statement in the suit.
17. Learned Senior Advocate appearing for the appellant submits, on instructions, that the Advocate-on-record for the appellant will serve a copy of the plaint and injunction application on the Advocate-on-record for the defendant no.1, in course of the day.
18. Learned Advocate-on-record of the defendant no.1, on instructions, waives the service of the writ of summons of the suit conditional upon receipt of the copy of the plaint.
19. The impugned order records that, the injunction petition is fixed on February 25, 2025 for further consideration.
20. Written objection to the injunction application, if any, by the defendant no.1 may be filed by February 14, 2025. Reply thereto, if any, be filed by February 21, 2025.
21. Learned Trial Judge is requested to take up the hearing of the injunction application on February 26, 2025 as fixed.
22. We clarify that, the observations herein are for the purpose of disposal of the appeal. None of the parties will be prejudiced by any of the observations made by us in this order. Learned Trial Judge will dispose of the injunction application without being influenced with any of the observations made by us in this order.
23. No fruitful purpose will be sub-served by keeping the appeal pending.

24. **FMAT 442 of 2024** along with all connected applications are **disposed**
of without any order as to costs.

(Debangsu Basak, J.)

25. I agree.

(Md. Shabbar Rashidi, J.)

(AD)