

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMAT No. 476 of 2024
+
CAN 1 of 2024

Chandrima Sen Majumder Choudhury
-vs-
Smt. Deya Barman Das and another

For the appellant : Mr. Biswajit Tiwari

For the respondent No. 1 : Mr. Amarendra Chakraborty

For the respondent no. 2 : Ms. Sonal Sinha,
Mr. Avishek Prasad

Heard on : April 7, 2025.

Judgment on : April 7, 2025.

Sabyasachi Bhattacharyya, J.:

1. On consent of all the parties, the appeal itself is taken up for hearing along with the application in view of the short ambit of the appeal.

2. The plaintiff/appellant filed a suit for declaration of title and consequential relief of injunction.
3. In the said suit, ad interim prayer for injunction was refused, against which the present appeal has been preferred.
4. Learned counsel for the appellant submits that the learned Trial Judge acted without jurisdiction in refusing ad interim injunction on the sole ground that only the deed of sale in favour of the plaintiff/appellant, and no other documents in support of the chain of title, has been produced.
5. It is contended that such chain of title need not have been proved at the ad interim stage.
6. Learned counsel for the respondent no. 1 submits that his client is also in possession of a sale deed in favour of the respondent no. 1 and has valid sanction from the concerned Municipality (respondent no. 2 herein) pursuant to which the construction on the suit property is being raised. As such, the allegation of the appellant in the present application for injunction, as to the construction being made without any sanction plan, is incorrect.
7. Thus, it is submitted that the learned Trial Judge rightly refused ad interim injunction.

8. Learned counsel appearing for the respondent no. 2 / Municipality contends that the said respondent has sent a notice to the respondent no. 1 to the effect that the respondent no. 1 is making the construction-in-question in deviation of the sanction plan, which adds a new dimension to the dispute.
9. Be that as it may, in the present appeal, we are concerned with the documents which were before the Trial Court at the stage of refusal of the ad interim injunction by the impugned order.
10. It is well-settled that at the stage of deciding an *ex parte* ad interim prayer for injunction, the averments in the plaint and injunction application and the documents filed by the plaintiff/appellant are to be taken as a sacrosanct for the limited purpose of consideration of such prayer.
11. Since none of the documents sought to be relied on either by the respondent no. 1 or the respondent no. 2 were before the Trial Court at any point of time till date, we are not inclined to look into the documents at this stage.
12. We find from the records and even from the impugned order that substantial *prima facie* proof of possession as well as title

was produced by the plaintiff by way of a sale deed in her favour, extracts of the records of rights and other documents.

13. The insistence of the learned Trial Judge on production of documents in support of the chain of title was entirely redundant and irrelevant in the context, since there was sufficient material before the learned Trial judge for grant of ad interim injunction.
14. Accordingly, FMAT No. 476 of 2024 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 2 dated November 26, 2024 passed by the learned Civil Judge (Senior Division), First Court at Malda in P.S. 304 of 2024 and granting ad interim injunction restraining the respondent no. 1 from changing the nature and character of the suit property and/or making any construction thereon in any manner and/or disturbing the peaceful possession and enjoyment of the plaintiff/appellant in respect of the suit property till disposal of the temporary injunction application pending before the learned Trial Judge.
15. The defendants shall file their respective written objections to the injunction application in the trial Court within a fortnight from date.

16. It is expected that the learned trial Judge shall dispose of the temporary injunction application pending before the said court as expeditiously as possible, preferably within May 31, 2025.
17. It is made clear that nothing in the above order shall be deemed to be a conclusive or final adjudication on the merits, either of the injunction application or the suit.
18. The above observations are tentative in nature, arrived at only for the purpose of deciding the present appeal in respect of the ad interim prayer of injunction, and shall not binding on the learned Trial Judge at any subsequent stage of hearing of the injunction application or the suit.
19. Consequentially, CAN 1 of 2024 is disposed of.
20. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)