

S/L 5
06.11.2025
Court No.1
AJ

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION

FMAT 24 of 2025
I.A. No: CAN 1 of 2025

Shital Ice Factory and Cold Storage
Vs.
Satyajit Roy & Ors.

Mr. Surajit Nath Mitra, Ld. Sr. Adv. (V.C.)
Mr. Partha Pratim Roy,
Mr. Debasish Mukhopadhyay,
Mr. Sandip Dutta,
Mr. Kunaljit Bhattacharya,
Ms. Srishti Sarkar.

.....for the appellant.

Mr. Anurag Sharma.

.....for the respondent nos.1 & 2.

Affidavit-of-service filed on behalf of the appellant be kept with the record.

The present appeal is at the instance of the defendant no. 25 in a suit for declaration and partition. It is directed against the Order No. 2 dated September 24, 2025 passed by the learned Civil Judge (Senior Division), Jalpaiguri Sadar Court, Jalpaiguri in the said suit being Title Suit No.181 of 2025.

The learned Trial Judge, on an application filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, has passed the impugned ad interim order of injunction thereby restraining the defendant nos. 23 to 25 to make any construction over the suit property and/or to change the nature and character of it and/or to part with the possession of it, fixing December 23, 2025 as the date for service return.

The appeal is admitted and by the consent of the parties, it is taken up for final disposal.

The plaintiffs are praying injunction against the defendant nos. 23 to 25, as such service of notice of appeal upon the rest of the respondents is dispensed with on the prayer and at the risk of the appellant.

Mr. Debasish Mukhopadhyay, learned Advocate-on-record for the appellant, undertakes to file Vakalatnama on

behalf of the respondent nos. 23 and 24 and in view of appearance of Mr. Anurag Sharma, learned advocate for the plaintiffs /respondents nos.1 and 2, formal service of notice of appeal upon the said respondents is dispensed with and the appeal is treated as ready as regards service.

The plaintiffs *inter alia* have prayed for a decree of partition of the suit properties upon declaration that the sale deed bearing nos. 2406 for the year 1965, sale deed bearing no.6798 for the year 1963, sale deed bearing no. 1137 for the year 1968 and sale deed bearing no. 878 for the year 1965 are void *ab initio* and not binding upon the plaintiffs.

The plaintiffs are alleging that the share of their father in the suit properties, during his minority, was sold by their uncle.

The impugned sale deeds were executed more than 60 years ago. The father of the plaintiffs, during his lifetime, had never challenged those deeds, therefore, the said challenge *prima facie*, appears to be time-barred.

Moreover, the order impugned fails to qualify the test of the proviso appended to Order XXXIX Rule 3 of the Code inasmuch as it is bereft of any reason consequently has failed to comply with the requirement prescribed by the Hon'ble Supreme Court in the case of **SHIV KUMAR CHADHA vs. MUNICIPAL CORPORATION OF DELHI AND OTHERS** reported in **(1993) 3 Supreme Court Cases 161** and in the case of **MORGAN STANLEY MUTUAL FUND vs. KARTICK DAS** reported in **(1994) 4 Supreme Court Cases 225**.

The order impugned, for the aforesaid reason, is set aside.

The pending application for injunction, by its nature, demands expeditious disposal, to facilitate it, the respondents are directed to file written objection to the said application **within a period of four weeks from date**, rejoinder thereto, if any, be filed by the plaintiffs **within a period of two weeks** from the date of receipt of copy of the said written objection.

The learned Trial Judge is requested to dispose of the said application as expeditiously as possible, preferably within

a period of eight weeks from the date already fixed in the suit i.e. December 23, 2025.

It is made clear that the learned Trial Judge shall decide the said application in accordance with law without being influenced by the fact that this Court has set aside the ad interim order of injunction and/or by any of the observations made hereinabove.

All points including the point of maintainability of the suit is kept open.

FMAT 24 of 2025 and the connected application for stay being CAN 1 of 2025 are disposed of with the above terms.

There shall be no order as to costs.

Parties to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Ajay Kumar Gupta, J.)

(Biswajit Basu, J.)