

Item No.- 5
05.03.2025
Rohan
Court No. 1

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri**

**FMAT 21 of 2024
With
I.A. No.: CAN 1 of 2024**

**Jiban Krishna Nandi
Versus
Avijit Nandi @ Abhijit Nandi & Ors.**

**Mr. Deborshi Dhar,
Mr. Rahul Agarwal,
Ms. Taniya Bhowmik**

... for the appellant

1. Despite service, there is no appearance on behalf of the respondents.
2. By virtue of an Order No. 2 dated 7th October, 2024 passed by the learned Civil Judge, Senior Division, Jalpaiguri in Title Suit No. 236 of 2024, the prayer for ad-interim order of injunction was refused.
3. The plaintiff/appellant filed a suit for partition, declaration, injunction along with the consequential reliefs. It is a specific case made out in the said plaint that the plaintiff/appellant, being one of the heirs of the original owner, namely, Sefali Rani Nandi, has acquired the right, title and interest conjointly with the other heirs after her death. It is further alleged that the other respondents barring the respondent No. 1 entered into the development agreement with the said respondent No. 7 who is attempting to make a construction thereupon and, therefore, the said respondent invaded the right, title and interest which the appellant acquires by virtue of devolution on the death of her mother.
4. The Trial Court proceeded to refuse the ex-parte ad-interim order of injunction solely on the ground that

the deed of purchase by the mother does not reveal anything else and in absence of any corroborative documents, it would not be proper to pass an ex-parte ad-interim order of injunction.

5. At the time of admission of appeal on 28th January, 2025, this Court directed the notice to be effected upon the respondents and further proceeded to pass an injunction in the form of a status quo with regard to construction over the said property on the basis of the development agreement for a limited period.
6. We are conscious that the consideration at the time of passing an ex-parte ad-interim order of injunction is different than the consideration at the time of disposing of an application for a temporary injunction. Obviously, in later case, the pleadings of the parties are before the Court and on the basis thereof, the Court will find whether the three golden principles required for passing an injunction are duly satisfied. In case of an ex-parte ad-interim order of injunction, the Court will evaluate the stand taken in the pleading, i.e., the plaint and the temporary injunction application and the emergent situation that has arisen causing the invasion of the right or contemplating to invade such right and it is fit and proper to protect the interest of the parties.
7. In the instant case, the plaintiff claimed right, title and interest in respect of a property conjointly with the other heirs on the basis of a devolution of interest on the death of the mother. A co-sharer has a right in every nook and corner of the joint property and one of such co-sharer cannot deny nor should be permitted to deny the right, title and interest of the other co-sharer.
8. In such view of the matter, we think it is a fit case to grant an ex-parte ad-interim order of injunction, more particularly, when a development agreement is entered

into by one of the co-sharers excluding the other co-sharer in respect of a joint property.

9. Accordingly, the order passed at the time of admission of this appeal, i.e., 28th January, 2025, is made confirmed to operate for a period of eight weeks from date or until further order which the Trial Court may deem to pass depending upon the circumstances warranting so.
10. The plaintiff/appellant is directed to put in the requisites for effecting the service of the application for temporary injunction upon the respondents in course of this week and the Trial Court is requested to dispose of the application for temporary injunction after the service is effected and the parties have filed their respective pleadings.
11. In the event the application for temporary injunction could not be disposed of within a period of eight weeks from date, it is open to the Trial Court to extend the said order without any further reference to the Court.
12. Accordingly, the appeal being **FMAT 21 of 2024** along with connected application being **CAN 1 of 2024** are **disposed of**.
13. No order as to costs.
14. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(HARISH TANDON, J)

(APURBA SINHA RAY, J)