

28.01.2025
Ct. No.1
Sl. No.35
akd

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

F. M. A. T. 23 of 2024
(CAN 1 of 2024)

[Soma Roy (Basunia) -Vs- Sujit Sutradhar & Anr]

Mr. Nabankur Paul
Ms. Sutapa Sen Paul
Mr. Bodhisatya Ghosh
... for the appellant

1. Order dated 13.11.2024 declining ad-interim injunction in a partition suit has been assailed.
2. One Pushpendra Deb Kangor was the owner of 3 decimals of land out of a total area of 5 decimals in R.S. Plot No. 33. Pushpendra died intestate leaving behind his son Suro Jetendra Deb as the sole heir. Appellant claims to have purchased 2½ decimals of land from the said Suro Jetendra Deb whereas defendants purchased 2 decimals from one Haripada Saha who in turn had purchased the land from one Jagadish Chandra Roy in the same plot.
3. Alleging the defendants were illegally encroaching on his share, appellant instituted a suit for partition. His prayer for ad-interim injunction was turned down by the learned Judge, inter alia, observing the complete chain deeds as referred in the plaint had not been filed. It was also observed there was no document in support of the plea that the appellant's possession is being disturbed by the defendants.

4. Learned Advocate for the appellant contends the record of rights was placed before the trial court and relevant materials to show his portion was being illegally encroached by the defendants were ignored.

5. We have considered the materials on record in light of the aforesaid submission made on behalf of the appellant. Appellant claims to be the owner of 2½ decimals of land out of 5 decimals in R.S. Plot No. 33. It is the plaintiff's case that defendants had purchased 2 decimals of land in the said property from one Haripada Saha who in turn had purchased it from one Jagadish Chandra Roy.

6. Bald allegations have been made in the plaint that defendants are seeking to disturb the appellant's possession. Noticing lack of contemporaneous documents in support of such plea, trial Judge declined the prayer for ad-interim injunction. Learned Judge also observed all the chain deeds had not been filed.

7. The aforesaid facts show trial Judge was not satisfied with the urgency in the case and referred ad-interim relief. We do not find any illegality in the said order of the learned Judge.

8. Accordingly, FMAT 23 of 2024 stands dismissed.

9. In view of dismissal of the appeal, connected application being CAN 1 of 2024 also stands disposed of.

10. We request the trial court to dispose of the injunction application at the earliest after giving opportunity of hearing to both the parties.

11. All issues are kept open.
12. There shall be no order as to costs.
13. Let urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)