

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FMAT 174 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025
Sukanya Das and another
Vs.
Sri Sankar Dutta

For the appellants : Mr. Sayantan Bose,
Ms. Priyanka Gope

For the respondent : Mr. P. Das,
Mr. G. Das,
Mr. M. Patra

Heard on : 02.02.2026

Judgment on : 02.02.2026

Sabyasachi Bhattacharyya, J.:-

Re: CAN 1 of 2025

1. Upon hearing learned counsel for the parties, we find that sufficient explanation for the delay of 21 days in filing the appeal has been made out.
2. Accordingly, CAN 1 of 2025 is allowed, thereby condoning the delay in preferring FMAT 174 of 2025.
3. There will be no order as to costs.

Re: FMAT 174 of 2025
CAN 2 of 2025

4. In view of arguable questions having been raised, the appeal is admitted for being heard on the grounds taken in the memorandum thereof.
5. Upon putting the parties on notice, in view of short ambit of the appeal, the hearing of the appeal itself is taken up along with the application.
6. The matter arises under peculiar circumstances.
7. The defendant/respondent herein has filed a partition suit, including a portion of the subject-matter of the present suit within its hotchpot.
8. The present plaintiffs/appellants, who are defendants in the said partition suit, instituted the instant suit for declaration of their title in respect of their share in the suit premises as well as seeking permanent injunction regarding their possession in respect thereof.
9. The learned Trial Judge, by the impugned order, dismissed the temporary injunction application of the appellants by relying on two judgments cited by the respondent on the proposition that a suit for permanent injunction by some co-sharers against others, to restrain the latter from exercising their right over any part of the property in joint possession, without claiming partition, is not maintainable.
10. Learned counsel for the appellants argues that there is a stark distinguishing feature in the present case from the decisions which were cited before the learned Trial Judge.

11. In the present case, there is already a pending suit for partition between the parties, which would render a further suit for partition unnecessary and academic. Secondly, in paragraph no.10 of the plaint of the said partition suit, the present respondent (plaintiff therein) has categorically admitted that the present respondent had been in possession of a portion of the suit premises till 2002 but that now the present appellants (defendant nos. 1 and 2 in the partition suit) are occupying such rooms and the entire suit premises.
12. It is, thus, argued that since the exclusive physical possession of the plaintiffs/appellants herein has not been denied, rather admitted by the respondent in the respondent's own suit for partition, the reliance placed by the learned Trial Judge on the cited judgments was misplaced.
13. Learned counsel appearing for the respondent submits that the respondent is admittedly a co-sharer in respect of the suit premises and, as such, no injunction can be granted restraining the said respondent/co-sharer from entering the joint property.
14. Upon considering the arguments of the parties, we find that the facts of the present case are unique. Undoubtedly, it is a settled general proposition of law that possession of one co-owner in respect of a joint property is, under normal circumstances, deemed to be the possession of the other co-owners as well.
15. However, such proposition is obviously subject to the rider that where a clear case of ouster of the other co-sharers may be made out from the pleadings of the parties, the physical possession of one co-sharer

cannot be deemed to be joint possession on behalf of the ousted co-sharers.

16. Although, in the present suit, the plaintiffs/appellants have not specifically pleaded ouster, from the pleadings in paragraph no. 10 of the plaint of the partition suit of the respondent himself, it is evident that admittedly the present respondent is not in physical possession, rather the present plaintiffs/appellants are in exclusive physical possession of the entire suit premises, to which the respondent claims joint title, since the year 2002.
17. Thus, there is an ingredient of ouster, *prima facie*, inbuilt in the pleadings of the respondent himself in his partition suit.
18. That apart, the general proposition referred to above speaks about the legal possession of the parties and creates a legal fiction in circumstances when one of the co-owners is in possession of the property, deeming the same to be possession on behalf of the said co-owner as well as the others.
19. However, such deeming fiction does not always translate into physical realities at the ground level.
20. In the admitted facts of the present case, the plaintiffs/present appellants are in exclusive physical possession of the subject property for a considerable period, since the year 2002, in exclusion of the defendant/respondent.
21. Hence, at the present juncture, if the defendant/respondent is permitted to disturb such possession prior to disposal of the partition

suit and/or the current suit of the appellants, it will only create a ruckus and give rise to further litigation.

22. Accordingly, this Court is of the opinion that the learned Trial Judge failed to take into consideration the distinctive features of the present case in relying on earlier judgments of this Court and the Hon'ble Supreme Court, where such features were absent, while dismissing the temporary injunction application of the appellants. Furthermore, the learned Trial Judge totally failed to take into account the specific admission in paragraph no. 10 of the plaint of the partition suit filed by the respondent as regards the plaintiffs/appellants being in exclusive possession of the subject property since the year 2002.
23. Also, in view of a partition suit already pending between the parties, the proposition that a suit for permanent injunction simpliciter is not maintainable is somewhat diluted.
24. Thus, a strong prima facie case for grant of injunction has been made out by the appellants for grant of injunction. In the facts of the case and in view of the respective stands taken by the parties, the other tests for grant of injunction are also satisfied.
25. Accordingly, FMAT 174 of 2025 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 14 dated January 17, 2025 passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta in Title Suit No. 1968 of 2023 and restraining the respondent and/or his men and agents from disturbing the peaceful enjoyment and possession of the plaintiffs/appellants in respect of the suit property till disposal of Title Suit No. 1968 of 2023. The temporary

injunction application of the plaintiffs/appellants before the trial court is, thus, allowed.

26. Consequentially, CAN 2 of 2025 is also disposed of.
27. There will be no order as to costs.
28. At this juncture, a suggestion comes from both the parties to the effect that the present suit of the appellants, bearing Title Suit No. 1968 of 2023, be heard along with the partition suit filed by the present respondent, bearing Title Suit No. 1684 of 2023 pending before the learned Judge, Tenth Bench, City Civil Court at Calcutta itself, in view of the issues involved in the two suits being identical.
29. Accordingly, we direct Title Suit No. 1968 of 2023 and Title Suit No. 1684 of 2023, both pending before the Tenth Bench of the City Civil Court at Calcutta, to be clubbed and heard together. It is expected that both the suits will be disposed of at the earliest, as far as the business of the learned Trial Judge permits.
30. It is made clear that all points are kept open to be argued by the parties before the trial court and this Court has not conclusively decided any of the contentions of the parties in the suits.
31. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)