

AD-13
Ct No.16
21.05.2026
TN

FMAT 172 of 2026
IA No: CAN 1 of 2026

Justin Conard Nagle and others
Vs.
Sanowar Ali Mullick and others

Mr. Shiv Shankar Banerjee,
Mr. Shaunak Ghosh,
Ms. Arijita Ghosh,
Ms. Shreyashi Maity

.....for the appellants

Mr. Shyamal Chakraborty,
Mr. Debajyoti Mondal,
Ms. Manju Jaiswal

....for the respondent nos. 1 to 4

1. The present appeal has been preferred against an order whereby the temporary injunction application filed by the plaintiffs/appellants has been dismissed.
2. Learned counsel appearing for the plaintiffs/appellants argues that the defendants/respondent nos. 1 to 4, in collusion with a third party-developer, that is, the defendant no.5 in the suit, have been attempting to throw out the plaintiffs/appellants unlawfully from the suit property. It is contended that although the plaintiffs have suffered a decree of eviction passed in favour of the respondent nos. 1 to 4, possession can only be obtained in due course of law through the process of court and not unlawfully by arrangement with a complete stranger to the suit.
3. In the present case, it is submitted, the defendants rely on purported surrender letters indicating that the

appellants' employees have surrendered the suit property in favour of the respondents.

4. Learned counsel submits further that the learned Trial Judge failed to take into consideration the fraud practiced upon the process of court by the defendants in seeking to oust the plaintiffs in such oblique manner, through private agency instead of through the court in execution of the eviction decree.
5. It is argued that since the plaintiffs' possession in respect of the suit property has been established and it is a third party (defendant/respondent no.5) which is attempting to purchase the decree and oust the plaintiffs/appellants, the learned Trial Judge ought to have granted injunction protecting such possession.
6. On a careful perusal of the materials before us, we find that admittedly the plaintiffs/appellants have suffered an eviction decree by the Trial Court, which was affirmed up to the First Appellate Court.
7. Thus, the status of the plaintiffs in respect of the suit property is that of judgment debtors vis-à-vis defendants/respondent nos.1 to 4.
8. The respondents rely on an agreement entered into by them for development of the property with the defendant/respondent no.5. In terms of Clause XV of the same, the developer (respondent no.5), together with the help of the landlords (defendants/respondent nos.1 to 4), shall arrange the shifting of the occupier, being "Peace Haven" (owned/run by the present appellants), and also jointly settle with the said

occupier to withdraw all the suits/proceedings initiated and/or filed by the said occupier against the present owners as well as with the previous owners, further declaring that there shall remain no dispute and/or claim in between the owners and the said Peace Haven and against each other in the present or in the future.

9. Thus, from the said agreement, it is palpable that in view of the long pendency of the execution case and the preceding eviction suit, the defendant nos.1 to 4/decreed holders entered into an arrangement with the developer, not to forcibly oust the judgment debtors/appellants but to enter into an amicable arrangement with them.
10. In any event, the respondent no. 5 is not acting in independent capacity in facilitating such settlement but, by dint of the development agreement, acts in the capacity of an agent of the decreed holders.
11. It is well-settled that a person failing to establish lawful possession of a property cannot get an injunction against the true owners. The said principle holds good all the same in respect of a judgment debtor in an eviction suit. After suffering an eviction decree, the judgment debtors have no legal status in respect of the decretal property.
12. Thus, a judgment debtor is not entitled to file a suit seeking declaration of its title and get an injunction protecting its possession against the decreed holders/true owners. If such a proposition were to be

encouraged, in every case where an eviction decree is suffered, the judgment debtor would merely go before the Court and file an independent suit, obtaining an injunction therein protecting it from being ousted from the suit property.

13. Insofar as the purported surrender letters are concerned, *per se*, the surrender letters merely show that voluntary possession has been handed over by the plaintiffs/appellants. The veracity of those have been squarely challenged by the plaintiffs before us. However, no such amendment in the plaint, challenging such surrender letters, has yet been incorporated.
14. Be that as it may, even without going into the question of veracity or validity of such surrender letters, fact remains that in the garb of injunction against a third party, the plaintiffs/appellants (judgment debtors) have in effect sought injunction against all the defendants, including the defendant nos. 1 to 4/deed holders. Defendant no. 5 has been added as a party but is, in effect, only an agent of the deed holders by dint of the development agreement between them. Thus, what the plaintiffs/appellants seek to achieve is to obtain an injunction against the deed holders, despite having suffered an eviction decree in respect of them before two forums.
15. In the absence of any legal status in respect of the suit property, the plaintiffs/appellants are not entitled to

maintain a suit seeking declaration of their title and/or get an injunction at all.

16. Hence, we find no illegality in the impugned order, whereby the temporary injunction application of the plaintiffs/appellants was dismissed.
17. Accordingly, FMAT 172 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
18. CAN 1 of 2026 is also dismissed consequentially.
19. There will be no order as to costs.
20. 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.)

(Biswaroop Chowdhury, J.)