

23rd February,
2026
(AK)
06

F.M.A. 934 of 2024
IA No: CAN 1 of 2024

Bailayat Hussen Sareng and others
Vs.
Swagat Ali Sareng and others

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K.R. Ahamed

...for the appellants.

Mr. Probal Kr. Mukherjee
Ms. Shebatee Datta
Ms. Poulami Roy

...for the respondent no.18.

1. The present appeal arises at the instance of the plaintiffs in a suit for partition.
2. Initially an *ad interim* order of status-quo was passed on the prayer of the plaintiffs/appellants by the learned Trial Judge, in respect of both parties, that is, the plaintiff and the defendant nos.5 to 10, relating to the nature, character and possession over the suit schedule property.
3. Subsequently, at the instance of the added defendant no.18 in the suit, who is the contesting respondent before us, an application was filed under Order XXXIX Rule 4 of the Code of Civil

Procedure for vacating the *ad interim* status quo order, primarily on the ground of suppression of a previous partition decree having been passed in Title Suit No.116 of 1944 whereby one Abdul Malek Jamadar, the predecessor-in-interest of the said added defendant, was exclusively allotted one of the plots which is the subject-matter of the present suit.

4. Learned counsel for the appellants argues that the said previous partition decree was not within the knowledge of the plaintiffs/appellants and, as such, there was no deliberate suppression of any material fact.
5. Secondly, it is contended that an application is pending at the behest of the plaintiffs to modify the impugned order whereby the status quo order was vacated in respect of the particular plot-in-question, that is, R.S. Dag no.1404, insofar as the concession recorded on the part of the learned Advocate for the plaintiffs/appellants was erroneously recorded.
6. Thirdly, learned counsel for the appellants argues that it will be evident from the CS records of rights, copies of which have been annexed to the present

application, that the name of the parties' predecessors was recorded as korfa tenants.

7. Since a korfa tenancy is neither transferable nor partible, the same could not have been a subject-matter of the earlier partition decree.
8. At this juncture, we invite learned senior counsel appearing for the added defendant no.18/respondent to make his submissions, although otherwise the respondents do not have a right of hearing as such at the stage of hearing under Order XLI Rule 11 of the Code of Civil Procedure, to elucidate the facts.
9. On this, learned senior counsel disputes the lack of knowledge of the plaintiffs/appellants regarding the earlier suit at the relevant juncture.
10. It is further submitted that the effect of the recording of korfa tenancy in the C.S. records of rights pales into insignificance and is subsumed by the earlier partition decree, passed by a competent civil court having jurisdiction.
11. Be that as it may, we find that by the impugned order, the initial *ad interim* status quo order was vacated on the ground of suppression of the earlier partition decree.

12. However, the main temporary injunction application has been kept pending.
13. Since the initial order of status quo was passed *ex parte* at the *ad interim* stage, we are of the view that the fact of an earlier partition decree was material and as such, the initial order of status quo is subject to be modified on the ground of suppression of the facts of filing of the earlier suit and the decree passed therein, irrespective of the plaintiffs/appellants' pleading ignorance of the same at this juncture, since in any event, if the said facts were before the learned Trial Judge, the outcome of the prayer for *ad interim* status quo might have gone the other way. The discovery of such facts also amounts to a change of circumstance in that sense, bringing the matter within the purview of Order XXXIX Rule 4 of the Code.
14. Hence, the impugned order modifying the initial *ad interim* status quo order is justifiable on such ground alone.
15. Insofar as the pending application at the behest of the plaintiffs/appellants for correction of the allegedly erroneous recording of their concession in

the impugned order is concerned, we make it clear that irrespective of the disposal of the present appeal, the said application will be kept alive and the learned Trial Judge shall decide on the same independently, only on the aspect of whether there was any concession granted by the plaintiffs/appellants, without the outcome of the said application having any bearing upon the decision taken in the present appeal, since the present decision is being passed on the merits of the case and is independent and irrespective of whether any such concession was given.

16. In view of the above, we dismiss FMA 934 of 2024 under Order XLI Rule 11 of the Code of Civil Procedure on the grounds as indicated above.
17. However, it is kept open for both the parties to argue on the effect of the earlier partition decree, taking into consideration the arguments of korfa tenancy and the rebuttal thereof by the added defendant no.18, at the stage of final hearing of the temporary injunction application.
18. If such points are raised, the learned Trial Judge shall be at liberty to decide the temporary injunction application on such questions as well

independently without being affected in any manner by any of the observations made hereinabove or in the impugned order.

19. CAN 1 of 2024 is accordingly disposed of as well.
20. There will be no order as to costs.
21. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)