

2nd February,
2026
(AK)
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F.M.A.T 481 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Smt. Renuka Dave and others
Vs.
Smt. Chandrakala Devi and others

Mr. Abhisek Banerjee
...for the appellants.

In Re: CAN 2 of 2025

1. Affidavit-of-service filed in court today be kept on record.
2. We find from the same that due service has been effected on the respondents, in spite of which the respondents abstain at the time of hearing today.
3. On a perusal of the condonation application, we find that due to financial constraints of the appellants, the appeal could not be filed in time.
4. After accumulating the necessary funds, the same was preferred immediately thereafter.
5. Keeping in view the sufficiency of such ground and the fact that the delay is only of about 26 days, CAN 2 of 2025 is allowed, thereby condoning the delay in preferring FMAT 481 of 2025.

In Re: FMAT 481 of 2025

6. The present appeal has been preferred against the dismissal of a temporary injunction application at the behest of the plaintiffs/appellants in a suit for partition simpliciter.
7. In the said suit, the plaintiffs/appellants claim title, which has been disputed by the defendants/respondents.
8. The latter produced purported deeds of gifts executed by the plaintiffs and the proforma defendant in favour of the contesting defendants/respondents.
9. On the premise of the same, the learned trial Judge came to the conclusion that the plaintiffs have failed to prove any *prima facie* title to the property.
10. That apart, no document of possession was also furnished by the plaintiffs/appellants, which was another ground for refusal of the injunction sought for.
11. Learned counsel for the appellants apprises us that the existence of the purported gift deeds came to light, insofar as the plaintiffs are concerned, only upon those being disclosed in the written objection of the defendants/respondents to the injunction application of the plaintiffs and, as such, initially there was no scope for challenging the same.

12. However, upon learning about those, an application for amendment of the plaint, incorporating a challenge to such deeds of gift, has been taken out, which has been heard by the learned Trial Judge and is pending for orders.
13. It is contended that unless injunction is immediately granted, the nature and character of the suit property may be irreversibly altered.
14. However, on an assessment of the impugned order, we do not find any legal or factual error in the same.
15. Insofar as the original plaint case is concerned, the claim of the plaintiffs was based on title simpliciter, on the strength of which partition was sought.
16. On such case being dispelled *prima facie* by the defendants by production of deeds of gift executed in their favour by the plaintiffs and the proforma defendant, the case made out by the plaintiffs in the original plaint was demolished at the *prima facie* stage.
17. That apart, no specific evidence of possession of the plaintiffs were produced.
18. Thus, there is no scope of interference at this stage.
19. However, we make it clear that nothing in the impugned order or the order proposed to be passed by us shall preclude the plaintiffs/appellants from taking out a fresh injunction application as and

when the application for amendment of plaint filed by the plaintiffs is allowed, if at all.

20. That apart, in such case, the learned Trial Judge shall grant an opportunity to the appellants to produce *prima facie* proof of their possession as well.
21. With the above observations, FMAT 481 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
22. The connected application for injunction, bearing CAN 1 of 2025, stands accordingly disposed of as well.
23. There will be no order as to costs.
24. 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.)