

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

FMA 69 of 2026
IA No: CAN 1 of 2025
CAN 2 of 2026

Sri Rabindranath Pal and others
Vs.
Kailash Agarwal and others

For the appellants : Mr. Partha Pratim Roy,
Mr. Soumyadeb Sinha,
Ms. Abhismita Goswami

For the respondent no.1 : Mr. Shounak Mukhopadhyay,
Mr. Prithish Chandra

Heard on : 23.02.2026

Judgment on : 23.02.2026

Sabyasachi Bhattacharyya, J.:-

1. Since questions of both fact and law are involved, FMA 69 of 2026 is admitted.
2. In view of the short issue involved, we take up the appeal along with the application for disposal.
3. Service on the respondent nos. 2 to 8 is dispensed with, since the primary relief sought in the appeal is against the plaintiff/respondent no.1.

4. The appeal arises out of a suit for declaration filed by the plaintiff/respondent no.1 asserting that the plaintiff has become the sole tenant in respect of the suit property under the appellants, in view of the demise of two of the joint tenants, by survivorship.
5. Learned counsel for the appellants argues that the original tenancy was a tenancy-in-common and, as such, the learned Trial Judge, while passing the impugned injunction order, erred in law in proceeding on the premise that the tenancy was a joint tenancy.
6. Learned counsel for the appellants further argues that the appellants could not have been restrained, as done by the impugned order, from issuing rent bills in respect of the suit premises to the other tenants of the property who, according to the appellants, are tenants-in-common along with the plaintiff/respondent no.1.
7. Learned counsel appearing for the plaintiff/respondent no.1 submits that the documents on record as well as the pleadings go on to show that the tenancy was a joint tenancy and, as such, it is the plaintiff/respondent no.1 on whom the tenancy solely devolved, upon the demise of the other joint tenants.
8. Secondly, it is argued that by dint of the letter dated September 25, 2023, in respect of which injunction has also been granted, the defendant nos. 1 to 3/appellants seek to assert the position that the tenancy is one in common and that apart from the plaintiffs, the other defendants are also severally responsible for acting as per the tenancy agreement dated November 30, 1992.

9. Learned counsel for the plaintiff/respondent no.1 hands over photocopies of the certified copy of an application filed subsequent to the passing of the impugned order by the learned Trial Judge whereby the other defendants have sought for a direction on the defendant nos. 1 to 3/appellants, that is, the landlords, to issue rent receipts in favour of the plaintiff/respondent no.1 exclusively, expressing their 'no objection' in that regard. Thus, it is submitted by learned counsel for the respondent no.1 that it is an admitted position even as per the perception of the other defendants that the tenancy has devolved exclusively on the plaintiff/respondent no.1.
10. In reply, learned counsel appearing for the appellants seeks to rely on a document as additional evidence, in the form of a purported letter dated August 26, 2023 written on behalf of the other defendants through their learned Advocate, whereby the defendant nos. 1 to 3/appellants have been requested not to mutate the tenancy in respect of the suit flat, in view of there being a subsisting order of status quo passed in a different suit.
11. Moreover, it is alleged that no copy of the application handed over today by learned counsel for the plaintiff/respondent no.1 has been served as yet on the appellants.
12. Upon hearing learned counsel for the parties, we find that inasmuch as the injunction granted to protect the possession of the plaintiff/respondent no.1 with regard to the suit property, there is no error in passing such injunction, since an arguable and triable issue

has been raised by the plaintiffs as to whether the tenancy in respect of the suit premises is joint or common in nature.

13. However, inasmuch as the restraint order regarding issuance of any rent bill by the defendant nos. 1 to 3/landlords in respect of the suit premises to the other defendants is concerned, we are of the opinion that the said injunction was passed *de hors* the authority of the learned Trial Judge inasmuch as it is doubtful as to whether the plaintiff, claiming himself to be the sole tenant, could restrain the landlords from issuing rent receipts to other persons, if in the perception of the landlords, the said other persons are tenants-in-common in respect of the property.
14. In any event, the issuance or non-issuance of such rent receipts by the landlords to third parties would not create any special equity in favour of the grantees of such receipts and/or affect the rights and contentions of the parties in the suit, since mere grant of rent receipts neither creates a tenancy in favour of the persons in whose favour such rent receipts are granted, nor is germane for the adjudication of the issues involved in the present suit.
15. However, at this stage, we are not inclined to permit the production of the purported letter dated August 26, 2023 sought to be furnished by the appellant before this Court as additional evidence, since the same was not placed before the learned Trial Judge. It will be open to the appellants to produce such documents in the trial court during the course of trial, if the appellants are otherwise permissible to do so,

subject to any objection being taken by the plaintiff and the other defendants.

16. Inasmuch as the application filed after the passing of the impugned order, a copy of which has been handed over to us by learned counsel for the respondent no.1, we do not take note of the same at this juncture since the same is a *post facto* development which cannot have any retrospective bearing on the validity or the legality of the order impugned before us.
17. However, the parties shall be entitled to advance their arguments with regard to the impact of the said application at the time of trial.
18. In view of the above observations, FMA 69 of 2026 is disposed of by modifying the impugned order being Order No. 16 dated August 11, 2025 passed by the learned Judge, Thirteenth Bench, City Civil Court at Calcutta in Title Suit No. 1986 of 2023 to the limited extent that the injunction restraining the defendant nos. 1 to 3/appellants including their men, agents and associates from issuing any rent bill in respect of the suit premises to the other defendants is set aside.
19. However, we make it clear that the other part of the injunction granted by way of the impugned order, restraining the defendant nos. 1 to 3/appellants from giving any effect and/or further effect to the alleged letter dated September 25, 2023 issued by the said defendants to the plaintiff as well as the proforma defendants (whereby the said defendants have been stated to be tenants-in-common with the plaintiff) and/or further restraining the defendant nos. 1 to 3/appellants, including their men and agents and associates, from

interfering and/or disturbing the possession of the plaintiff/respondent no.1 in respect of the suit premises in any manner whatsoever till disposal of the suit, is hereby upheld.

20. We make it abundantly clear that none of the observations made in this order or the observations made in the order impugned before us shall prejudice the rights and contentions of the parties in the main suit and it will be open to the learned Trial Judge to dispose of the suit on its own merits without being influenced in any manner by any of such observations.
21. CAN 1 of 2025 and CAN 2 of 2026 are disposed of in the light of the above observations.
22. None of the above observations shall preclude the learned Trial Judge from disposing of the application filed by the defendant nos. 4 to 10 after the passing of the impugned order, referred to above, on its own merits.
23. There will be no order as to costs.
24. 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.)