

A-41
Ct No.16
09.06.2025
TN

FMAT 134 of 2025
IA No: CAN 1 of 2025

Smt. Rita Dutta and another
Vs.
Smt. Sharmila Daw (Nee Dutta) and others

Mr. Tanmoy Mukherjee,
Mr. Bimalendu Das,
Ms. Shomrita Das

....for the appellants

1. The present appeal has been filed against an order whereby the temporary injunction application of the plaintiffs/appellants has been dismissed.
2. The claim of the plaintiffs/appellants to the suit property is two-fold.
3. First, it is contended by the plaintiffs/appellants that the defendants/respondents claim title to the suit property by dint of transfer deeds executed by the mother-in-law of the plaintiff/appellant no.1 despite the property originally belonging to the father-in-law of the appellant no.1, having been purchased from the joint family nucleus of the family.
4. Secondly, the plaintiff/appellant no.1 claims a right of residence through her deceased husband in respect of the suit property and, as such, it is argued that even in the event the purchase of the suit property from the joint family nucleus cannot be substantiated at this stage, the appellant no.1, who is residing in the property with her son, the appellant no.2, in any

- event, has a right of residence in the estate of her deceased husband and/or her matrimonial home, comprised of the suit property.
5. We find a sufficiently strong *prima facie* case having been made out on the above aspects, particularly with regard to the statutory right to residence of the appellant no. 1 in the suit property, which is her matrimonial home.
 6. Moreover, taking into consideration that the appellants were enjoying ad interim injunction during pendency of the injunction application, which was ultimately dismissed by the impugned order, we are of the opinion that the appeal should be heard on the above questions and on the other grounds as taken in the memorandum of appeal and is accordingly admitted.
 7. Since we have already indicated that a *prima facie* case has been made out and, from the averments in the injunction application, it is clear that there is urgency involved and the balance of convenience and inconvenience is in favour of grant of injunction, we grant injunction restraining the respondents and/or their men and agents from interfering with the peaceful possession of the plaintiffs/appellants in respect of the suit property in any manner without due process of law till disposal of the application.
 8. Since none appears for the respondents despite service of notice on the learned Advocate who has lodged a

caveat on behalf of the respondent no.1, which is borne out by the receipt which is filed today and kept on record, we choose to pass the above ad interim order in the absence of representation of the respondents, including the caveator, at this juncture.

9. The appellants shall, however, serve a server copy of the present order on the learned Advocate who has lodged a caveat on behalf of the respondent no.1 as well as copies of the said order and the application directly on the other respondents on behalf of whom no caveat has been lodged.
10. The appellants shall file an affidavit-of-service in that regard on the returnable date.
11. The application shall next be listed for hearing in the monthly list of July, 2025.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)