

AD – 21
Ct No.16
14.07.2026
(SSS)

FMA 815 of 2026
with
CAN 1 of 2026

Suvendro Mullick and Anr.
Vs.
Tapendra Mullick and Ors.

Mr. Probal Kr. Mukherjee, Sr. Adv.,
Mr. Bhaskar Mukherjee,
Ms. Nafisa Yasmin
.....For the appellants.

Mr. Rohit Banerjee,
Mr. Vishwarup Acharyya
.....For the respondent no. 3.

1. The present challenge has been preferred against an order whereby an application for temporary injunction filed by the plaintiffs/respondents in connection with a suit challenging a lease deed executed by the defendant nos. 1 and 2/appellants in favour of the defendant no. 3/respondent has been challenged and consequential reliefs have been sought.

2. The premise of the plaint case is that Tapendra Mullick, the plaintiff/respondent no. 1, was inducted as a trustee in respect of the subject property by dint of a resolution taken by some of the trustees dated February 21, 1993.

3. Learned senior counsel appearing for the appellants argues that in terms of Clause 14 of the trust deed, Jitendra, the original settlor, retained the exclusive right to appoint a trustee if one of the other trustees, including the appellants' predecessor, died during the lifetime of the settlor.

4. As per the said clause, if any one of the said trustees met his demise after the death of the settlor, only in such event, the surviving trustees would have the power to appoint a new trustee in place and stead of the said deceased trustee.

5. It is contended that on the date of alleged appointment of Tapendra, the plaintiff no. 1, as a trustee, all the trustees were still alive, although the settlor had met his demise. Thus, the provision under Clause 14 of the trust deed, empowering the trustees to appoint a new trustee, could not be invoked at all, as all the trustees were then surviving. As such, the very root of the appointment of plaintiff no. 1 as a trustee is assailed by the appellants.

6. Learned senior counsel, in his usual fairness, also points out that a previous suit filed by the appellants, challenging the resolution dated February 21, 1993, was dismissed for default, although as per his instruction, an application

has been subsequently filed for restoration of the same, which is still pending.

7. Be that as it may, it is argued that mere dismissal of the suit for default, although debarring the plaintiffs from filing a fresh suit on the self-same cause of action unless the previous one was restored, does not take away the substantive right of the appellants to assail the veracity of the appointment of plaintiff/respondent no. 1 as a trustee.

8. Upon hearing learned senior counsel appearing for the appellants and perusal of the impugned order, it transpires that the learned Trial Judge, upon recalling an earlier order dismissing the self-same injunction application, fixed the injunction application for hearing on the very next day and passed the impugned order granting injunction without adverting to the written objection filed by the appellants in connection therewith.

9. Since the very appointment of plaintiff/respondent no. 1 as a trustee has been assailed on the ground that the same was *de hors* the trust deed, his right/locus standi in such capacity to maintain the suit itself comes under the scanner and ought to have been decided *prima facie* before granting injunction.

10. Thus, a strong *prima facie* arguable case has been made out.

11. Hence, FMA 815 of 2026 is admitted, to be heard on the above questions and the other grounds taken in the memorandum of appeal.

12. In view of the brief ambit of the appeal, this Court intends to hear out the appeal along with the application.

13. Accordingly, since the caveators choose not to appear despite service of notice, the learned Advocate-on-record for the appellants shall serve fresh copies of the application as well as the memorandum of appeal, with server copies of this order, on the plaintiffs/respondent nos. 1 and 2 directly and/or through the learned advocate who lodged a caveat on their behalf in this Court, indicating that the matter shall be listed under the heading "Application" on July 27, 2026, when an affidavit of service to that effect shall be filed by the appellants.

14. Such notice shall be deemed to be the notice of the appeal as well.

15. In view of the appearance of the defendant/respondent no. 3 through counsel, service of notice of the appeal on the said respondent is dispensed with.

16. The trial court records need not be called for and the appeal shall be heard on the papers available before the Court without preparation of any formal paper books.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)