

AD-17
Ct No.16
21.04.2025
TN

FA 9 of 2025
IA No: CAN 1 of 2024

Prakash Chandra Prodhan and another
Vs.
Shayama Pada Maity, since deceased, his legal heirs and
legal representatives Smt. Namita Maity and others

Mr. Anit Kumar Rakshit,
Mr. Subham Rakshit

....for the appellants

Ms. Malyasree Maity,
Mr. Nishant Kumar,
Ms. Fardeen Hossain

....for all the respondents

1. Affidavit-in-opposition filed today be kept on record.
The learned Advocate appearing for the plaintiffs/respondents shall file the Hon'ble Second Judge's copy of the opposition during the course of the day. In the meantime, we proceed on the premise of a second copy of the opposition furnished by the learned Advocate for the appellants.
2. The present appeal has been preferred against a preliminary decree of partition.
3. Since we are of the opinion that arguable questions have been made out for hearing of the appeal on merits, the injunction as prayed in the present application ought to be granted. Although certain questions on merits are sought to be raised on behalf of the respondents, since those can only be considered at the final hearing of the appeal, there is no bar in

granting injunction at this stage to protect the subject-matter of the *lis*.

4. Learned counsel for the respondents further urges that no injunction was prayed for in the court below. However, the appeal is deemed to be a continuation of the suit and there is no bar in an independent injunction application being made for the first time in an appeal, in the event the parameters of grant of injunction are satisfied on the basis of the affidavit supporting the injunction application.
5. Upon hearing learned counsel, we are satisfied that a *prima facie* case has been made out as well as the balance of convenience and inconvenience is in favour of grant of injunction. Also, unless injunction is granted, there is a possibility of unnecessary multiplicity being created, which may lead to an irreparable injury and the appeal being rendered infructuous.
6. Hence, IA No: CAN 1 of 2024 is allowed on contest, thereby restraining the respondents and/or their men and agents by an order of injunction from transferring, alienating and/or creating any third party interest in respect of the suit property till disposal of the appeal.
7. The learned Trial Judge shall continue with the final decree proceedings but shall not draw up a final decree, without the prior leave of this court, till disposal of the appeal.

8. In view of the appearance of the respondents through their learned Advocate, service of notice of the appeal on the respondents is dispensed with.
9. The trial court records shall be brought by special messenger at the cost of the appellants, to be deposited within a week from date.
10. The trial court shall, however, retain skeletal records for the purpose of continuing with the final decree proceedings.
11. The appellants shall prepare and file the requisite number of papers books within eight weeks from the date of service of notice of arrival of the trial court records on the learned Advocate for the appellants.
12. Liberty to the parties to mention the appeal for inclusion in the list as and when the same is made ready for hearing.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)