

28. 11.03.2025
Court No.16.

(Pritam)

**FMA 233 of 2025
with
CAN 1 of 2024**

Sk. Usman

-Vs.-

Santosh Kumar Kahar & Ors.

Ms. Salma S. Shah,
Ms. Soni Hassan

.....for the appellant.

1. Leave is granted to the petitioner to file supplementary affidavit.
2. We find from the impugned order that the learned trial Judge refused to grant ad interim injunction, despite the plaintiff/petitioner having made out a *prima facie* case for grant of injunction, on the purported ground that if there is any change in nature and character of the suit property or creation of third party interest, the same shall be "effected" by the decree of order of the suit.
3. Apparently, the learned trial Judge meant that such transfer or change of nature and character of the suit property would be subject to the outcome of the suit.

4. However, the learned trial Judge failed to consider that at the *ex parte* ad interim stage, the court has to proceed on the premise that the allegations made in the injunction application are sacrosanct and consider only whether an order of injunction can be granted on the basis of the case made out by such pleadings.
5. That apart, the approach of the learned trial Judge to the effect that any change in nature and character or third party interest, if created, would abide by the outcome of the suit is bad in law inasmuch as such change of nature and character of the suit property or creation of third party interest might be irreversible and can give rise to unnecessary multiplicity of proceedings.
6. Accordingly, since the plaintiff/appellant has otherwise made out a strong prima facie case and the balance of convenience and inconvenience is in favour of injunction, the respondent shall remain restrained by an order of injunction from changing the nature and character of the suit property in any manner whatsoever and/or from selling/transferring/encumbering and/or creating any third party interest in respect of the suit property till disposal of the appeal.
7. The petitioner shall serve copies of the application on the respondents/opposite parties, along with the copies of the supplementary affidavit filed by him,

indicating that the application shall be next listed in the monthly list of April 2025, when the appellant shall file affidavit-of-service to that effect.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)