



D/L.40.
April 16, 2025.
MNS.

SAT No. 234 of 2023

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CAN 1 of 2023

Sujoy Parui and others

Vs.

Smt. Kaushalya Sarkar and others

Mr. Satyam Mukherjee

... for the appellants.

1. Learned counsel for the appellants hands over a photocopy of the information slip obtained from the e-court services of this court, from which it is evident that the deficit court-fees have been deposited by the appellants. The said photocopy be kept with the records.
2. In view of such defect having been cured, the appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
3. The present Second Appeal will be heard on the following substantial questions of law:
 - i) Whether the courts below substantially erred in law in granting a decree of declaration of exclusive title of the plaintiffs/respondents in respect of the suit property despite partition by metes and bounds, either by way of a registered deed of partition or a partition decree, having not been proved by the plaintiffs/respondents?



- ii) Whether, in the teeth of the admission of PW1 as to the plaintiffs/respondents having no possession in respect of the suit property, the courts below were justified in granting a decree of permanent injunction?
- iii) Whether the courts below committed a substantial error of law in decreeing the suit in the absence of any prayer for recovery of possession having been sought by the plaintiffs/respondents, despite the admission of PW1 as to the plaintiffs not being in possession of the suit property?

Re: CAN 1 of 2023 (injunction application)

4. In view of a *prima facie* case having been made out since the appeal has been admitted for being heard on the substantial questions of law as formulated above, we are of the opinion that unless an interim order is granted, as prayed for, the appeal is at the risk of being rendered infructuous. Also, we find that balance of convenience and inconvenience and irreparable injury factors operate in favour of grant of injunction.
5. Accordingly, both parties shall maintain *status quo* as regards possession and nature and character in respect of the suit property and shall remain restrained from creating any third party interest in



respect of the suit property till disposal of the application.

6. The petitioners shall serve copies of the application on the respondents/opposite party nos. 1 to 7 indicating that the application shall next be listed before the learned Single Judge having determination on May 6, 2025, subject to the convenience of the said Bench and upon being mentioned by the parties for enlistment, when an affidavit-of-service to that effect shall be filed by the petitioners.
7. Service of the application on the proforma respondents/opposite party nos. 8 to 10 is dispensed with for the present.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)