

JPD. 20.
August 1, 2025.
MNS.

CALCUTTA HIGH COURT
In The Circuit Bench at Jalpaiguri
Appellate Side

FMAT No. 18 of 2025

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CAN 1 of 2025

Sri Ashok Kumar Ray @ Ashok Roy
Vs.
Sri Amit Agarwal and others

Mr. Bapi Sarkar,
Mr. Roumyadip Saha

... for the appellant.

1. Learned counsel for the appellant argues that the learned trial Judge erred in law in refusing ad interim injunction.

2. In the suit, the plaintiff/appellant has sought for a declaration of his title and cancellation of an agreement for sale and a deed of sale on the premise that those were obtained by misrepresentation and has also prayed for recovery of possession.

3. The case of the appellant is that the appellant was made to understand that he was entering into a development agreement with respondents/developers.

4. However, after the agreement was ultimately entered into, the plaintiff/appellant discovered that the papers signed by him had been converted to an agreement for sale as well as a deed of sale.

5. Learned counsel submits that at this stage, the learned trial Judge ought to have considered the plaint case as the premise of the ad interim prayer and not gone into the merits of the case.

6. We find from the impugned order that the learned trial Judge has, by way of reasons of refusal, stated that once a deed is registered and the executant does not challenge his signature, then it is the duty of the executant to prove that fraud was played upon him before the execution of the deed by adducing evidence.

7. It has been also recorded that the appellant admittedly went through a draft copy as well as final copy of the document and then signed the same.

8. However, a basic apparent error in the order is that the appellant does not challenge his signature on the ground of mere fraud but the plaint case revolves around alleged misrepresentation on the part of the respondents inasmuch as the appellant was made to understand that he was signing some other documents than those which were actually registered.

9. Moreover, the perusal of a draft copy cannot be equated with the perusal of the final copy.

10. Apart from that, another premise on which the learned trial Judge proceeded was that fraud has to be proved by adducing evidence, which is a premature

consideration at the stage of grant of ad interim injunction.

11. Moreover, it is well-settled that at the stage of consideration of an ad interim prayer for injunction, the plaint and the injunction application pleadings are to be treated as sacrosanct and the limited scope of the court is to consider whether on the basis of such allegations, made on oath, the plaintiff has made out a *prima facie* case for trial.

12. Applying such test, it transpires that in the event transfers of the subject property happen in the meantime, it may create multiplicity of proceedings and it might be difficult to execute the decree, even if the suit is ultimately decreed, against third parties who may be *bona fide* purchasers for value without notice of the suit.

13. In such view of the matter, the appeal is admitted and shall be heard on the above questions and on the grounds taken in the Memorandum of Appeal.

14. The parties shall maintain *status quo* as regards nature, character, possession as well as transfer and/or alienation and/or creation of third party interest in respect of the subject property till disposal of the application.

15. The appellant shall serve copies of the Memorandum of Appeal as well as the application on

the respondents indicating that the matter shall be listed before the appropriate Bench in the next Circuit, when an affidavit-of-service to that effect shall be filed by the appellant.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)