

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Sandip Kumar De

FMA 208 of 2024
with
CAN 1 of 2024
with
CAN 2 of 2026
With
CAN 3 of 2026

Utpal Roy and Ors.
Vs.
Md. Kashab & Anr.

For the appellants : Mr. Abhijit Ray,
Mr. Santu Nandy, Advs.

For the added respondent : Mr. Subir Sabud,
Mr. Sourajit Dasgupta,
Mr. Surajit Maity, Advs.

Heard on : August 13, 2026.

Judgment on : August 13, 2026.

Sabyasachi Bhattacharyya, J.:

1. Rejoinder and affidavit filed today be kept on record.
2. The present appeal has been preferred against an order whereby the petitioners' prayer for *ex parte* ad interim injunction was refused by the learned Trial Judge. Learned counsel for the appellants points out that the learned Trial Judge, despite holding that admittedly the plaintiffs/petitioners are in possession of the suit premises since 1998, went on to observe that the plaintiffs/petitioners had failed to make out a *prima facie* case in order to get ad-interim injunction and that balance of convenience and inconvenience was not in favour of the plaintiffs/petitioners and, as such, refused injunction.
3. However, it is pointed out that the said observation is cryptic and self-contradictory and no reason has been ascribed in the order to hold that the plaintiffs have not been able to make out any *prima facie* case.
4. Moreover, learned counsel places reliance on the registered deed of conveyance executed in favour of the appellants on December 23, 1998 by the then Mutawalli of the Waqf estate, of which the suit property was then a part, which was overlooked by the learned Trial Judge. It is argued on the strength of the said deed that it will be evident from its contents that due application was made before the Commissioner of Wakf, West Bengal by the vendor, the then Mutawalli, seeking

permission to sale, which permission was subsequently granted and only thereafter, the deed was executed. Thus, it is argued that the learned Trial Judge acted without jurisdiction and erred in law in refusing ad-interim injunction.

5. Although none appears for the original respondent, learned counsel for the added respondent submits that the said added respondent is the present Mutawalli of the subject property which is admittedly the Wakf property. As per the added respondent, the defendant/original respondent is a fictitious person. It is submitted that taking undue advantage of the order of injunction, if any were to be passed, the appellant would assert title over a Wakf property, despite the transfer of Wakf properties being void *ab initio* by dint of Section 51(1A), as amended in 2013, of the Wakf Act, 1995 (now renamed as the “Unified Waqf Management, Empowerment, Efficiency and Development Act”).

6. Even under the previous (pre-amendment) sub-section (1) of Section 51 of the Wakf Act, 1995, notwithstanding anything contained in the wakf deed, any sale etc. would be void unless it was effected with prior sanction of the Board of Wakf.

7. Moreover, under sub-section (2) as it then stood, such permission had to be preceded by publication in the Official Gazette the particulars relating to the transaction referred to in sub-section (1), inviting objections and suggestions with respect thereto, and only upon considering all objections and suggestions, if any, that may be received from the concerned Mutawalli or any other person interested in the

Wakf, the sanction could have been accorded under certain specific circumstances as enumerated in Clauses (i) to (iii) thereof.

8. In the absence of proof of any such foundational facts, it is contended that even on the basis of the materials produced by the plaintiffs/appellants before the Trial Court, the learned Trial Judge was justified in refusing injunction.

9. Upon hearing learned counsel for the parties, we find that a registered deed of conveyance, not of recent origin, but of December 23, 23, 1998, purportedly executed in favour of the appellants, has been produced in the Trial Court.

10. It is well-settled that official acts carry a presumption of correctness, unless rebutted. At the *ex parte* ad-interim stage, the averments made in the plaint and the injunction application and the documents relied thereon are to be taken as sacrosanct for the limited purpose of deciding such *ex parte* ad-interim prayer.

11. Proceeding on such anvil, a *prima facie* case of title has been made out. In the deed itself, it is stated that permission was obtained from the Commissioner of Wakf by the vendor, who is claimed to be the then Mutawalli of the Wakf property.

12. Unless such presumption is rebutted or at least assailed by way of specific pleadings and particulars, it cannot be said that the plaintiffs/appellants have not made out a *prima facie* case of their having obtained a valid title and possession in respect of the property.

13. The learned Trial Judge recorded in the order, although somewhat absurdly, that “admittedly”, the plaintiffs/appellants are in possession of the property which could not be the case before the defendant had any scope of filing written objection.

14. However, even independently of such observation, we find that certain electricity bills in respect of the subject property were furnished in the Trial Court by the plaintiffs/appellants, which, coupled with the registered transfer deed in favour of the plaintiffs/appellants, create a *prima facie* presumption of possession.

15. The objections raised by the added respondent are premature at this juncture, since the respondents, who have only filed an application for addition of party in the Trial Court and have not yet been impleaded, do not have the locus standi as yet to controvert the prayer for injunction.

16. Be that as it may, we are of the opinion that on the materials before us, which were also before the Trial Court, a sufficient *prima facie* case for grant of injunction in respect of possession has been made out.

17. However, for the ends of justice, the added respondent’s application for impleadment as party to the suit is also required to be taken up expeditiously, prior to deciding the injunction application finally, in order to put a terminus to the issue of locus standi of the added respondent to oppose the injunction application.

18. Accordingly, FMA 208 of 2024 is allowed on contest against the added respondent and *ex parte* against the original respondent, thereby setting aside the impugned order bearing Order no. 2 dated January 3, 2024 passed by the learned Judge, Thirteenth Bench, City Civil Court at Calcutta in Title Suit no. 08 of 2024, and granting injunction restraining the defendant/original respondent herein (against whom the ad interim prayer was made in the Trial Court in the first place) from disturbing the possession of the appellants in respect of the suit property till disposal of the temporary injunction application in the Trial Court.

19. The learned Trial Judge, shall, positively within three weeks from the date of communication of this order to the Trial Court, dispose of the application filed by the added respondent herein for their impleadment in the suit. Written objection to such application for addition of party, if any, shall be filed by the present plaintiffs/appellants within a week from date in the Trial Court.

20. Immediately upon adjudication of such application, the learned Trial Judge shall make all endeavour to dispose of the injunction application at the earliest, subject to the outcome of the addition of party application.

21. A copy of the addition of party application filed by the added respondent in the Trial Court shall be served by tomorrow (14.08.2026) on the learned Advocate for the appellants in this Court, which will be deemed to be good service on the appellants themselves.

22. No order as to costs.

23. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of requisite formalities.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Sandip Kumar De, J.)

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Ct No.16
13.08.2026
(SSS)