

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FMA 184 of 2025
IA No: CAN 1 of 2025

Sk. Aref Rahaman and another
Vs.
Sk. Md. Kutubuddin and others

For the appellants : Mr. Mukteswar Maity,
Mr. S. M. Ismail
Ms. Manika Sarkar

For the respondent no.1 : Mr. Anindya Halder

Heard on : 21.04.2025

Judgment on : 21.04.2025

Sabyasachi Bhattacharyya, J.:-

1. On consent of both the parties, the appeal, along with the application, are taken up for hearing in view of the limited conspectus of the appeal.
2. In a suit for preemption filed under the Mohammedan Law by the plaintiffs/appellants, the learned Trial Judge, by the impugned order, has refused to grant *ex parte* ad interim injunction.
3. Learned counsel for the appellants submits that the impugned order is devoid of reasons and that the defendant no.1/respondent no.1,

who is the primary contesting respondent, could not in any event have acquired any right over any demarcated portion of the property, as the property was never partitioned by metes and bounds.

4. It is argued that as such, the respondent no. 1 cannot be permitted to make construction over and/or alienate any portion of the property of his choice, since all the co-owners have equal rights over every inch of the suit property till pre-emption is granted.
5. Learned counsel for the defendant no.1 submits that a substantial portion of the construction has already been completed and only the plastering and certain works of civil nature are left to be done. It is also submitted that the defendant/respondent no.1 is residing with his family in the said building and, as such, at least the plastering and the civil works may be permitted to be completed. Learned counsel relies on the photographs annexed to the affidavit-in-opposition for such purpose.
6. We find from the affidavit-in-opposition as well as the affidavit-in-reply filed today that the position as sought to be made out by the respondent no.1 is not credible. From the photographs annexed to the affidavit-in-opposition itself, it is clear as daylight that none is inhabiting the said property, since no signs of habitation are found from the photographs which are annexed to the affidavit-in-opposition, which has been affirmed by the respondents themselves as lately as on March 21, 2025.
7. Moreover, we find that neither the walls nor the entire roof of the ground floor has been completed sufficiently for anybody to inhabit

the said property. In the absence of any walls, gate, or complete boundary and/or any window or door, we do not find any reason to accept the contention that the respondent no.1 is living at the premises at present. The photographs clearly prove otherwise, since even the roofs, which have been partially constructed, are still supported by bamboo props. Hence, since the construction is still in a completely inchoate stage and there is no question of anybody residing there at the present, we are not inclined to permit the respondent no.1 to complete the construction at a portion of the property of his choice, keeping in view that the property is joint and the respondent no.1, even by virtue of his purchase, cannot claim exclusive rights or title in respect of a particular demarcated portion of the property at this juncture.

8. That apart, the impugned order is vitiated by complete absence of any reasons and/or any consideration of the relevant yardsticks for grant or refusal of injunction. Neither the components of *prima facie* case nor the parameters of the grant of injunction in a preemption case have been adverted to by the learned Trial Judge. The learned Trial Judge also failed to take into consideration the urgency involved, since from the photographs annexed to the affidavit-in-opposition it is evident that construction is being undertaken by respondent no.1 in a particular portion of the still-joint property.
9. Also, the balance of convenience and inconvenience and irreparable injury factors operate in favour of grant of injunction over and above a *prima facie* case having been made out by the plaintiffs/appellants.

10. Accordingly, FMA 184 of 2025 is allowed on contest, thereby setting aside the impugned order dated December 04, 2024 passed by the learned Civil Judge (Senior Division), Third Court at Howrah in Title Suit No. 565 of 2024 and granting ad interim injunction restraining the defendant/respondent no.1 and/or his men and agents from transferring, alienating and/or encumbering the suit property in favour of third parties and/or changing the nature and character of the said property in any manner whatsoever, as well as from disturbing the possession of the plaintiffs/appellants in respect of the portion of the suit property occupied by the plaintiffs/appellants till disposal of the temporary injunction application pending before the learned Trial Judge.
11. However, considering the urgency in the matter and the fact that due to the injunction, the respondent/defendant no.1 is deterred from completing the construction and keeping in view the inconvenience suffered by the respondent no.1 due to such reason, we choose to expedite the hearing of the injunction application, which we are informed is fixed for hearing next some time in the month of September, 2025.
12. Accordingly, we direct the defendant/respondent no.1 to file his written objection to the temporary injunction application in the court below within a week from date, as per the prayer of the respondent no.1.
13. The learned Trial Judge shall make all endeavour to dispose of the temporary injunction application itself, upon giving an opportunity of

hearing to both sides, within four weeks from the date of communication of this order to the learned Trial Judge, by shifting back the date of hearing of the injunction application accordingly.

14. The learned Trial Judge shall, for the purpose of compliance, act on the written communication of the learned Advocates for the parties, coupled with a server copy of this order, without insisting upon prior production of a certified copy thereof.
15. IA No: CAN 1 of 2025 stands disposed of as well accordingly, in the light of the above observations.
16. It is hereby clarified as a note of caution that we have only tentatively dealt with the issues involved in the injunction application and no conclusive observation has been made insofar as the final adjudication of the injunction application is concerned. The learned Trial Judge shall be free to independently decide the injunction application on its own merits, without being unduly influenced in any manner by any of the observations made in our order.
17. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)