

18<sup>th</sup> March,  
2025  
(AK)  
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**F.M.A. 252 of 2025**  
**IA No: CAN 1 of 2025**

Samimara Begam  
Vs.  
Husanur Sardar and others

Mr. Abhilash Chatterjee  
...for the appellant.

Ms. Shebatee Datta  
Ms. Poulami Roy  
...for the respondent no.6.

1. Affidavit-of-service filed in court today be kept on record.
2. The present appeal has been preferred against an order whereby on an application filed by the added defendant/respondent no.6 under Order XXXIX Rule 4 of the Code of Civil Procedure, the *ad interim* injunction granted initially in favour of the plaintiff/appellant in a suit for partition was vacated on the ground of suppression of material facts.
3. The learned trial Judge proceeded on the premise that there were two material suppressions.
4. First, a previous partition suit was filed by the husband of the present plaintiff/appellant, by

virtue of the gift deed executed by whom the present suit has been filed by the appellant.

5. However, the fact of the said suit having been filed and subsequently withdrawn has not been disclosed while obtaining the *ad interim* injunction.
6. More importantly, the husband of the plaintiff/appellant, in his previous suit, failed to obtain any *ad interim* injunction.
7. The second ground was that the present respondent no.6-Sima Begum was initially not impleaded as a party to the present suit by the appellant. Subsequently, upon obtaining an *ad interim* injunction, the said Sima Begum was impleaded in the suit and the injunction order was extended against the said added party as well.
8. As pointed out by learned counsel for the respondent no.6, the very purpose of this entire *modus operandi* was to avoid the caveat which had been lodged by the said Sima Begum, that is, respondent no.6 herein which is also evident from deletion of the name of Sima Begum from the plaint as originally drafted.
9. We find from the plaint, annexed at page-35 of the injunction application filed in connection with the present appeal that indeed, the name of Sima

Begum appears to have been struck out/scored through by pen even after having been added, obviously since the said Sima Begum had lodged a caveat and in the event the injunction was moved with Sima Begum as a party, a copy of the injunction application had to be served on the said Sima Begum which would prompt her to disclose before the court the material facts which were suppressed, regarding the predecessor-in-interest/husband of the appellant having failed to obtain an injunction in a similar suit filed by the appellant's husband and the factum of the said suit having been subsequently dismissed as withdrawn.

10. It transpires further that the plaintiff, in order to avoid the caveat of Sima Begum, adopted a stratagem inasmuch as the *ad interim* injunction was obtained without Sima Begum as a party but thereafter Sima Begum was added and on an application of the appellant, the injunction was extended against the said Sima Begum as well, thus deliberately avoiding prior service of notice on Sima Begum.
11. The *mala fides* of the plaintiff/appellant would be further clear from the fact that Sima Begum was very much a party to the partition suit filed by the

husband of the appellant, through the gift deed executed by whom the appellant claims title.

12. Since the appellant has filed a suit on the strength of the gift deed of her husband and there is no allegation of any strained relationship between the two, it is beyond the realm of credibility that the appellant was unaware of the previous suit or the failure of her husband to obtain injunction in the said suit by her husband, through whom she claims, as well as the fact of Sima Begum being a party thereto.
13. Thus, the facts which were considered material but suppressed by the appellant by the learned trial Judge were indeed material facts which were deliberately suppressed by the appellant. As such, the learned trial Judge was justified in vacating the *ad interim* order of injunction obtained by the appellant.
14. Hence, we do not find any scope of interference in the appeal.
15. Accordingly, FMA 252 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
16. Consequentially CAN 1 of 2025 is also dismissed.
17. We make it clear that we have not entered into the merits of the injunction application itself and it will

be open to the parties to urge all points, irrespective of the observations made above, independently in the injunction application.

18. It is expected that the learned trial Judge shall dispose of the temporary injunction application expeditiously.
19. There will be no order as to costs.

**(Sabyasachi Bhattacharyya, J.)**

**(Uday Kumar, J.)**