

M/L.2.
November 3, 2025.
MNS.

FMA No. 1398 of 2025

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CAN 1 of 2025

Sri Gurudas Mallick and another
Vs.
Subhendu Sekhar Mallick and others

Mr. Tanmoy Mukherjee,
Mr. Rudranil Das

... for the defendants/appellants.

Mr. Kaushik Dey,
Mr. Debdipto Banerjee

...for the plaintiffs/respondent nos. 1 and 2

1. On the prayer of learned counsel for the plaintiffs/respondent nos. 1 and 2, leave is granted to the said respondents to file their *Vakalatnama* by November 6, 2025.
2. In view of arguable questions being involved in the matter, we admit the appeal.
3. Upon hearing learned counsel for the parties, we find that the issues involved in the interim application are same as those in the appeal itself and as such, instead of relegating the parties to a long-drawn hearing, we take up the appeal itself for hearing.
4. The present challenge arises out of an order of temporary injunction granted at the behest of the plaintiffs/respondent nos. 1 and 2.

5. In view of the other respondents not being directly affected by the outcome of the present appeal, service of notice of appeal on the said respondents is dispensed with.
6. Since the plaintiffs/respondent nos. 1 and 2 are represented through counsel, we take up the appeal itself for hearing.
7. The plaintiffs/respondent nos. 1 and 2 have filed a partition suit claiming about 1/9th share in the suit property, which comes to around 145 square feet.
8. On the other hand, as per the admitted case in the plaint and the injunction application, at least 7/9th share of the suit property belongs to the defendant no.1/appellant no. 1.
9. The appellants had already started the construction of their dwelling house on the suit property, apparently after demolishing the previous mud-built structure standing thereon. At this juncture, the suit was filed and the impugned order of injunction, in the form of *status quo* regarding nature and character of the suit property, was obtained by the plaintiffs.
10. Learned counsel for the appellants argues that even if the suit is decreed in favour of the plaintiffs, the plaintiffs can at best get share to the extent of about 145 square feet in the property, which would not enable them to make any construction on such miniscule portion. As such, on the face of the

records, it is apparent that the remedy of the plaintiffs may at best lie in owelty money.

11. That apart, learned counsel for the appellants submits that since the appellants have already demolished their previous residential mud-built structure and the construction of their new dwelling house has been started and raised up to the lintel level, injunction at this stage would stack equities against the grant of injunction.

12. Learned counsel for the plaintiffs/respondent nos. 1 and 2 disputes the contentions of the appellants and submits that the appellants are trying to encroach upon more than their share of the suit property and to build the structure on the front portion of the suit property, which is the best part of the property.

13. That apart, it is submitted that the sanction plan obtained for such purpose is in the name of appellant no. 2, who does not own 7/9th share of the property.

14. Upon hearing learned counsel for the parties, we find substance in the contentions of the appellants to the effect that even the plaintiffs/respondent nos. 1 and 2 are successful in the suit, their shares would be confined to about 1/9th of the suit property, which comes to about 145 square feet. Such miniscule portion would not permit any

independent construction by the respondent nos. 1 and 2.

15. On the other hand, the appellants have already demolished their mud-built structure and are seeking to build a residence on the property, which circumstance, in our opinion, would balance the equities in favour of the appellants.

16. In any event, the appellants submit that they are willing to forego any special equity or right in their favour merely by virtue of making such construction.

17. Accordingly, upon hearing learned counsel for the parties, we are of the opinion that grant of interim *status quo* order would be against the balance of convenience and inconvenience.

18. On the other hand, there is no irreparable injury which the plaintiffs may suffer if injunction is not granted.

19. In the light of the above observations, FMA No. 1398 of 2025 is allowed on contest, thereby setting aside the impugned *status quo* order, bearing Order no. 17 dated May 22, 2025 passed by the learned Civil Judge (Senior Division), Bankura, in Title Suit No. 264 of 2024.

20. It is, however, made clear that the appellants, if they make any construction pursuant to a sanction plan from the appropriate authorities on the suit property, shall not claim any special rights or equity

merely by virtue of making such construction at the final hearing of the suit.

21. That apart, it is further clarified that in the event the Trial Court so opines at the time of disposal of the suit, it may pass a reasoned order/decreed for demolition of the construction made on the suit property and/or any portion thereof, if purposes of equity are so sub-served.

22. With the aforesaid observations, we express the expectation that the learned trial Judge shall dispose of the suit as early as the roster of the said court permits.

23. Needless to say, we have not gone into the merits of the contentions of the parties in the suit and the learned trial Judge shall decide the suit on its own merits independently and without being influenced in any manner by any of the observations made hereinabove.

24. CAN 1 of 2025 stands disposed of accordingly as well.

25. There will be no order as to costs.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)