

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.M.A.T. 381 of 2025
IA No: CAN 1 of 2025

Tarak Chakrabortty
Vs.
Kartick Maji and others

For the petitioner	:	Mr. Rwitendra Banerjee Mr. Sandip Kundu, Advs.
For the respondent no.1	:	Mr. Gopal Ch. Ghosh, Snr. Adv. Mr. Rajkrishna Mondal, Adv.
Heard on	:	18.11.2025
Judgment on	:	18.11.2025

Sabyasachi Bhattacharyya, J.:-

1. Affidavit-of-service filed in court today be kept on record.
2. Leave is granted to the learned Advocate-on-record for the appellant to rectify the defect pointed out by the Additional Stamp Reporter.

3. The present appeal has been preferred by the defendant no.1 in a suit for partition against an order of temporary injunction.
4. The learned Advocate appearing for the appellant submits that the appellant (who is the defendant no.1 in the suit), is a teacher and purchased his share of the suit property by a registered deed.
5. Subsequently permission for conversion of the portion of the suit property, which is in occupation of the defendant no.1/appellant, was obtained duly from the concerned authorities.
6. Thereafter, mutation was also done and sanction plan was obtained by the appellant to make a G+1 construction.
7. After such sanction plan being issued and the construction having commenced and the foundation work having already been completed, the plaintiff/respondent no.1 filed the suit and obtained the impugned order of injunction.
8. It is pointed out by learned counsel for the appellant that in the written objection, such facts were clearly pleaded, but were overlooked by the learned Trial Judge.

9. Even the local inspection which was held in connection with the injunction application culminated in a report which showed that there are other constructions over the suit property as well.
10. It is submitted that the plaintiff waited till the foundation work was done after obtaining permission of conversion and sanction plan as well as mutation by the defendant no.1/appellant and only thereafter, to harass the appellant, obtained the injunction from the learned Trial Judge.
11. It is submitted that as such, the balance of convenience and inconvenience lies in favour of refusal of injunction, since the appellant, being a teacher, is of humble means and with the said limited financial capacity, he has already accumulated construction materials and obtained a sanction plan by investing a considerable amount of money.
12. Learned senior counsel for the plaintiff/respondent no.1 vehemently opposes the appeal and submits that in the event the appellant is permitted to complete the construction work, the agriculture which is being conducted by the appellant over the rest of the land would be adversely affected.

13. Learned senior counsel further submits that the permission of conversion was obtained by the defendant no.1/appellant behind the back of the plaintiff/respondent no.1.
14. Furthermore, it is argued that if a building is constructed on the said foundation by the appellant, the light of the respondent no.1 would be affected.
15. Furthermore, in the event a building is permitted to be constructed, apart from agriculture being affected, since it is well-settled that in a partition suit possession has to be honoured in the final allocation, the appellant would suffer irreparably and it would also be extremely difficult to do cultivation in the scattered balance portion of the land.
16. Upon a perusal of the materials before us, we find that the Commissioner's report clearly indicates that even apart from the construction being made by the defendant no.1, there are several other buildings on the suit property.
17. Since it is an admitted position that the suit property is a joint property of all the parties, it is *prima facie* evident that some of the other co-owners than the appellant have also made constructions over their respective occupied portions.

- 18.** Although notionally every co-sharer has right over every inch of joint property, at the practical ground level, different co-sharers may be in actual physical possession of disparate portions of the suit property.
- 19.** Considering the balance of convenience and inconvenience, we find that the defendant no.1/appellant has already obtained a sanction plan and has invested in getting a conversion and mutation of the portion occupied by the appellant and only thereafter has commenced construction.
- 20.** After such commencement, foundation level work has already been done.
- 21.** Only at this stage was the injunction obtained by the respondent no.1 although the respondent no.1 was sitting tight over the matter till all the above paraphernalia were being completed by the appellant.
- 22.** Moreover, it is submitted that the sanction plan is limited to 2 decimals of the land, which apparently would come within the share of the defendant no.1, even as per the admitted position of the plaintiff in the suit.
- 23.** Even otherwise, since the foundation has already been laid and conversion of the land as well as mutation has been done in the

name of the defendant no.1/appellant, there cannot be any further damage done to agriculture than what has already been done, which cannot be overturned unless the suit is decided otherwise.

- 24.** Also, since other co-owners have already made constructions over their occupied portions, as apparent from the Commissioner's report, the appellant is entitled to complete the already-started construction work on the ground of parity as well.
- 25.** Keeping in view such circumstances, we are of the opinion that no irreparable injury would be suffered by the plaintiff, if injunction is not granted, which could not be repaired by either granting possession to the parties according to the allotments over the entire property and/or granting owelty money accordingly, commensurate with the respective allotments made.
- 26.** Even otherwise, the appellant has on oath (in the present application) stated that the appellant shall not claim any equity for the construction and shall only construct strictly according to the sanction plan which contemplates a G+1 building.
- 27.** Alleged obstruction to light on an otherwise open land is an absurd objection to the proposed construction by the appellant.

- 28.** In view of the above, we find that the learned trial Judge did not take into consideration any of the above aspects of the matter and, in a mechanical fashion, merely observed that a *prima facie* case has been made out and, since every co-sharer has equal right over the suit property, the preservation of the property is required and as such restrained construction.
- 29.** Accordingly, FMAT 381 of 2025 is allowed on contest against the respondent no.1 and *ex parte* against the others, thereby setting aside Order No.37 dated June 30, 2025 passed by the learned Civil Judge, Senior Division at Arambagh, District-Hooghly in Title Suit no.37 of 2022.
- 30.** Needless to say, as per the statement made by the appellant, the appellant shall strictly adhere to his sanction plan while making the construction and shall not claim any special equity for such construction at the final hearing of the suit.
- 31.** It is made clear that the merits of the suit have not been gone into by this court and the learned Trial Judge shall decide the suit independently on its own merits without being influenced in any manner by any of the observations made above.
- 32.** CAN 1 of 2025 is also consequentially disposed of.
- 33.** There will be no order as to costs.

- 34.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

AD-05

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