

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 Supratim Bhattacharya

FMA 116 of 2025
with
CAN 1 of 2025
with
CAN 2 of 2026

Hena Naskar (Safui) and Anr.
Vs.
Sanjib Safui and Ors.

For the appellants : Mr. Sounak Bhattacharyya,
Mrs. Mamata Khatun,
Mr. Satyam Mukherjee,
Mrs. Sayani Ahmed, Advs.

For the respondent nos.
1 to 3 : Mr. Chittapriya Ghosh,
Ms. Aiswarjya Gupta,
Ms. Priyanka Saha, Advs.

Judgment on : January 20, 2026.

Sabyasachi Bhattacharyya, J.:

1. The present appeal arises against an order of temporary injunction in the form of *status quo* in respect of nature, character, possession and alienation of the suit property.
2. The plaintiffs/respondents filed a suit for partition and obtained the impugned order of injunction on the basis of their averments made in a temporary injunction application filed therein. The injunction application was contested by the defendants by filing written objection.
3. Defendant nos. 3 and 4 in the suit have preferred the present appeal. Learned counsel for the appellants argues that a registered deed of partition in respect of CS Khatian No. 159 was produced by the defendants before the Trial Court. The flimsy objection thereto, that too, in the rejoinder filed by the plaintiffs in connection with their injunction application, was a denial on the ground that the said document was manufactured. However, It is argued that till date, no amendment has been sought in the plaint challenging such registered deed.
4. It is argued that the learned Trial Judge overlooked the said registered deed of partition in favour of entries in the records-of-rights and purported information furnished by the the B.L. &

L.R.O., indicating that the names of the predecessor-in-interest of the plaintiffs were recorded in respect of the suit property.

5. However, learned counsel for the appellants argues, documents pertaining to *Mourasi Mukarari Patta* granted by some of the original co-sharers, who were parties to the partition deed, in favour of third parties were also produced by the defendants. By dint of such transfers, the said original co-owners lost their title even in their demarcated portions by virtue of the operation of the West Bengal Estates Acquisition Act, 1953, since their intermediary rights vested in the State.
6. Learned counsel next contends that even from the documents produced by the respondents, it transpires that the names of the predecessor-in-interest of the plaintiffs were recorded in respect of Dag numbers which do not tally with the plot numbers mentioned in the schedule of the plaint and the injunction application.
7. It is submitted that each of the plaintiffs/respondents have claimed a miniscule 108th share in the suit property but have been favoured with injunction, disproportionately, over the entire suit property, to the gross detriment of the interest of the

defendants. Accordingly, it is submitted that the impugned order ought to be set aside.

8. Learned counsel for the appellants, before parting with the matter, also seeks to place reliance on an alleged deed of gift executed by the predecessor-in-interest of the plaintiffs/respondent no. 1 in his favour, wherein the existence of the partition deed relied on by the defendants/appellants is admitted. However, it is candidly submitted by learned counsel for the appellants that the said document was not a part of the Trial Court records, nor produced before the Trial Court, for which an application under Order XLI Rule 27 has been filed before this Court to bring the said document on record.
9. Learned counsel appearing for the plaintiffs/respondents controverts the submissions of the appellants and contends that information received from the B.L. & L.R.O. have been produced to indicate that till date, the names of the predecessor-in-interest of the plaintiffs, namely, Jyotish Chandra Safui is reflected in respect of the suit plots.
10. It is further contended that none of the suit Dag numbers are mentioned in the partition deed produced by the defendants

and, as such, it cannot be ascertained whether the said partition deed dislodges the claim of title of the plaintiffs.

11. Learned counsel for the plaintiffs/respondents also argues that the suit property has been recorded in the Records of Rights as a water body and efforts are being made by the defendants/appellants to convert the same, due to which there is all the more urgency to grant injunction.
12. Upon hearing learned counsel for the parties, we find several discrepancies in the plaint case at a *prima facie* level.
13. Even without looking into the document (purported gift deed) sought to be relied on by the defendants/appellants before this Court for the first time, the documents produced before the learned Trial Judge would suffice to indicate that a registered partition deed in respect of the entire CS Khatian No. 159, in which all the suit plots are admittedly situated, was produced by the defendants, by virtue of which specific demarcated portions were allocated among the predecessors-in-interest of the parties, which precludes any further inference as to the suit property still retaining its joint character. As rightly argued by the appellants, till date, there is no challenge in law to the said

registered partition deed and as such, a presumption of correctness is attached with the said registered deed.

14. In the said deed, it transpires that the entire CS Khatian number, within which all the suit plots fall, has been covered. Thus, there is sufficient *prima facie* doubt as to whether the suit property retains its joint character at all.
15. Insofar as the documents produced by the plaintiffs themselves in the Trial Court, there is discrepancy *inter se* such documents.
16. In the extracts from the Records of Rights as annexed at Page 14 of the affidavit-in-opposition filed by the plaintiffs/respondents in this Court, it transpires that with regard to Khatian No. 159, the recording has been done in respect of Plot nos. 410, 412, 414, 411 and 404, none of which come within the ambit of the suit property. The suit property covers RS Dag Nos. 416, 417, 418 and 420 of CS Khatian No. 159.
17. Although RS Khatian No. 153/1 has been stated in the schedule of the plaint as well, no corresponding document regarding RS Khatian No. 153/1 has been produced even by the plaintiffs themselves in the Trial Court.

18. That apart, we accept the contention of the appellants that in view of each of the plaintiffs themselves having claimed a miniscule share of 108th of the entire suit property, the grant of injunction in respect of the entire property, covering several plots of considerable area, would be contrary to equitable principles.
19. We find from the impugned order that the learned Trial Judge, although referring to the registered partition deed, merely proceeded on the basis of the one-line denial of the same in the pleadings of the plaintiffs, without taking into consideration that no challenge in law has been preferred thereto till date by the plaintiffs.
20. The learned Trial Judge further relied on the entries in the RS Records of Rights, which themselves contain discrepancies as pointed out above. That apart, it is well-settled that if pitted against documents of title, the Records of Rights, which merely raise a presumption as regards possession, have to give way. In the present case, since the registered deed of partition regarding the entire CS Dag No. 159 has been produced by the defendants in the Trial Court, there was no scope for the learned Trial Judge to override the same by

placing reliance on the entries in the Records of Rights, which themselves contain discrepancies as well. Thus, on the basis of the pleadings and documents which were before the learned Trial Judge, we are of the opinion that the learned Trial Judge erred in law and in fact in granting injunction in the form of *status quo*, since no *prima facie* triable issue has been raised by the plaintiffs/respondents sufficient to grant an order of injunction in their favour.

21. Also, since only 108th share in the property has been claimed by each of the plaintiffs/respondents, the balance of convenience and inconvenience is against the grant of injunction. In any event there is scope of grant of owelty money to the plaintiffs/respondents at the end of the litigation in view of their shares being miniscule; as such, we do not find any irreparable injury sufferable by the plaintiffs if injunction is refused.

22. In such view of the matter, on consent of parties, we decide the appeal along with the connected applications.

23. We do not find any necessity, in view of the above orders, to adjudicate on merits CAN 2 of 2026, which is an application for production of further evidence. Accordingly, we dispose of

CAN 2 of 2026 with leave to the appellants to seek to rely on the documents annexed thereto, if deemed necessary, during trial of the suit in due course of law.

24. With regard to the main appeal, we dispose of the same as follows:-

(i) FMA 116 of 2025 is allowed on contest, thereby setting aside the impugned order dated November 30, 2024 passed by the learned Civil Judge, Senior Division, Fourth Court at Alipore, District – South 24 Parganas in Title Suit No. 204 of 2016 and dismissing the temporary injunction filed by the plaintiffs/respondents in the Trial Court.

(ii) CAN 1 of 2025 is consequentially disposed of as well.

(iii) There will be no order as to costs.

25. We make it abundantly clear that the above observations were rendered only tentatively, for the purpose of disposing of the appeal, and shall be construed to be restricted to such disposal only. Such observations shall not affect the rights and contentions of the parties or unnecessarily prejudice the learned Trial Judge while disposing of the suit itself on its own merits in accordance with law.

26. It is expected that the suit being of the year 2016, the learned Trial Judge shall expedite the disposal of the same as far as the business of the said court permits.
27. The parties shall act on the server copy of this order, duly downloaded from the official website of this Court.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

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Ct No.16
20.01.2026
(SSS)