

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 Biswaroop Chowdhury

FA 376 of 2025
IA No: CAN 2 of 2025

Smt. Amita Sabud and others
Vs.
Soumen Sabud and others (Smt. Kanaklata
Sabud, since deceased)

For the appellants : Mr. Sourojit Dasgupta,
Mr. Tarasankar Samanta,
Mr. Surajit Maity
For the respondents : Mr. Sarbananda Sanyal,
Ms. Poulami Chakraborty
Heard on : 11.05.2026
Judgment on : 11.05.2026

Sabyasachi Bhattacharyya, J.:-

1. In view of the short point involved, the appeal and the application are taken up for hearing together.
2. The appeal arises out of a preliminary decree of partition. There is no dispute between the parties as to their respective shares, as granted by the learned Trial Judge in the impugned decree.
3. Learned counsel for the appellants contends that the learned Trial Judge refused to grant any decree of permanent injunction at the time of passing the preliminary decree, observing that no decree of

permanent injunction can be granted against the other co-sharers of the suit land, that is, the defendants.

4. Learned counsel for the appellants further contends that, taking undue advantage of the refusal to grant permanent injunction, the respondents are trying to change the nature and character of the suit property.
5. Learned counsel for the respondents controverts such allegations and submits that the prayer of permanent injunction in the suit was confined to non-disturbance of the peaceful possession of the plaintiffs/appellants in respect of the suit property. As such, the arguments now advanced by the appellants, it is contended, are beyond the plaint pleadings.
6. Upon hearing learned counsel for the parties, we do not find any illegality in the impugned judgment inasmuch as there is no concept of a 'preliminary' and a 'final' decree of permanent injunction in law.
7. The stage of grant or refusal of permanent injunction can only arise at the final hearing of the partition suit and passing the final decree therein. Hence, it was premature for the learned Trial Judge, at the stage of grant of preliminary decree declaring the shares of the parties, even to consider the prayer for permanent injunction.
8. Even otherwise, the allegations now sought to be levelled against the respondents were not a part of the plaint, nor was any permanent injunction sought in the suit itself in respect of the nature and character or transfer of the suit property.

9. Be that as it may, the observation of the learned Trial Judge in the impugned judgment, to the effect that no decree of permanent injunction can be given against the rest co-sharers of the suit land, has to be treated as tentative in nature, in view of our above observation that it was not the correct stage for the Trial Court even to consider the relief of permanent injunction.
10. Accordingly, we do not find any scope of interference with the impugned judgment and preliminary decree.
11. Hence, FA 376 of 2025 is dismissed, thereby affirming the impugned judgment and preliminary decree dated April 07, 2018 passed by the learned Civil Judge (Senior Division), Second Court, Tamluk, District: Purba Medinipur in Title Suit No. 38 of 2017.
12. Consequentially, CAN 2 of 2025 is also disposed of.
13. We make it clear that in the event the plaintiffs/appellants have any subsequent cause of action for seeking injunction, it will be open to the appellants to approach the learned Trial Judge, in the final decree proceedings, seeking temporary injunction.
14. If such an application is filed, an opportunity will be given to the defendants/respondents to controvert the same by filing a written objection as well as by advancing their arguments on the same.
15. The plaintiffs/appellants shall also be at liberty to seek ad interim injunction on the ground of urgency, if established, in connection with such temporary injunction application.
16. It is further clarified that the observation in the impugned judgment, to the extent that no decree of permanent injunction can be given

against the rest co-sharers of the suit land, that is, the defendants, shall be treated to be a tentative finding and shall not, in any manner, be considered to be binding on the learned Trial Judge at any subsequent stage of the suit, either at the stage of passing the final decree or at the stage of consideration of any application for temporary injunction, if filed by any of the parties.

17. There will be no order as to costs.

18. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Biswaroop Chowdhury, J.)