

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 Supratim Bhattacharya

F.M.A.T. 55 of 2026
IA No: CAN 1 of 2026

Rajeev Swaika
Vs.
Suneel Swaika and others

For the appellant : Mr. Shaunak Mukherjee
Mr. Sanwal Tibrewal
Ms. Sutapa Mitra
Ms. Rachita Arora

For the respondent no. 1 : Mr. Sakya Sen, Snr. Adv.
Mr. Ankan Rai
Mr. S. Dasgupta
Mr. Ratnesh Kr. Rai
Ms. Devanshi Deora
Ms. Nabanita Manna

Heard on : 17.02.2026

Judgment on : 17.02.2026

Sabyasachi Bhattacharyya, J.:-

1. The certified copy of the impugned order, filed today in court, be kept on record.

2. In view of arguable questions of fact and law being involved, the appeal is admitted, to be heard on the grounds taken in the Memorandum of Appeal.
3. On consent of both parties, since the issues involved in the injunction application and the appeal are virtually the same, the appeal itself is taken up for hearing along with the application.
4. The genesis of the dispute is a property belonging to a Hindu Undivided Family (HUF) by the name of Ramdas Mahadeo Parsad HUF.
5. Disputes having arisen between the parties at a juncture when one Bijoy Swaika was the Karta of the HUF, an arbitral proceeding was initiated, which culminated in an award dated September 9, 2010.
6. In terms of the award, the total property belonging to the HUF was sub-divided into several schedules.
7. Whereas other schedules were allocated individually to the coparceners/their HUFs, the fourth schedule remained a joint property.
8. To give further effect to the award, a deed of family arrangement was entered into subsequently between all concerned in the month of September, 2010.

- 9.** By dint of the same, the fourth schedule was retained as a part of the Ramdas Mahadeo Parsad HUF with Bijoy Kumar Swaika as Karta and his wife Smt. Kusum Swaika as a member thereof.
- 10.** Subsequently, a partition suit was filed by the present respondent no.1, impleading the present appellant as well as other joint family members, wherein the subject property covered by the fourth schedule referred to above was also included.
- 11.** In the said suit, on an application being filed by one of the defendants, being the wife of Rajeev Swaika (the present appellant), an order of status quo was passed in respect of the suit property, including the fourth schedule property.
- 12.** Subsequently, an application was filed by the plaintiff therein, that is, the defendant/respondent no.1 herein, for vacating the said status quo order, alternatively for withdrawal of the suit with liberty to sue afresh on the self-same cause of action.
- 13.** It is an admitted position that subsequently, during arguments, the present respondent no.1 (plaintiff in the said suit) categorically clarified that the said plaintiff intended to withdraw his partition suit without liberty to sue afresh.
- 14.** The said application was filed in the month of September, 2025.

15. However, till date the same is pending before the suit court, due to objections being raised by the present appellant.
16. In the said suit, the present appellant, that is, one of the defendants therein, sought to file a written statement with a counter claim.
17. However, the learned Single Judge, by the last order passed in the said suit, indicated that the application for vacating/withdrawal would be taken up at the stage when the suit was filed, apparently signifying that the said application would be decided prior to permitting the present appellant to proceed with his counter claim.
18. Subsequently, the present suit has been filed for partition of the aforementioned fourth schedule properties by the present appellant.
19. In connection with the said suit, where the fourth schedule properties are the primary subject matter, an application for temporary and *ad interim* injunction was filed by the plaintiff/present appellant.
20. By the order impugned in the present appeal, the learned Single Judge, despite having observed that the suit properties are joint,

refused to grant *ad interim* injunction primarily on the premise that no urgency had been made out.

- 21.** Learned counsel appearing for the appellant argues that the attempt of the respondent no.1 to withdraw his partition suit in the teeth of the status quo order subsisting therein was the primary trigger to file the second partition suit.
- 22.** It is submitted that since the appellant herein has been precluded from moving his counter claim (also claiming partition) in the previous partition suit of the respondent no.1, there is no alternative left for the appellant for canvassing his cause of action and seeking injunction but to file the subsequent partition suit and seek injunction therein.
- 23.** It is submitted that in view of the learned Single Judge hearing the prior suit having made his intention clear to the effect that the withdrawal application would be taken up first, prior to the counter claim of the appellant being moved, there is impending danger of the status quo being vacated by withdrawal of the suit and consequentially it becoming open to the respondent no.1 to transfer his purported 50 per cent share in the fourth schedule properties.

- 24.** Learned counsel submits that, thus, there is extreme urgency, particularly in view of the respondent no.1 having admitted in his application for vacating/withdrawal that he has already entered into an agreement for sale of his purported 50 per cent share in the suit properties in favour of a third party.
- 25.** Secondly, it is argued by the appellant that the alleged 50 per cent share of the respondent no.1 in the suit properties is disputed by the plaintiff/appellant.
- 26.** By placing reliance on the arbitral award and the subsequent family arrangement, learned counsel for the appellant seeks to impress upon the court that on the demise of Bijoy Kumar Swaika and his wife Smt. Kusum Swaika, respectively the Karta and member of Ramdas Mahadeo Parsad HUF, the property comprised in the fourth schedule has devolved upon all the coparceners, including the daughters of the appellant and the respondent no.1.
- 27.** If the shares are delineated in line with such shares, the respondent no.1 would only have 1/4th share in the suit properties, that is, 25 per cent therein, and not 50 per cent as alleged.

- 28.** Thus, since the share of the respondent no.1 itself is disputed, a premature transfer of the property during pendency of the appellant's partition suit would cause irreparable and irretrievable injury to the plaintiff/appellant.
- 29.** It is, thus, contended that the learned Trial Judge acted contrary to law and the facts of the case in refusing to grant *ad interim* injunction despite having held that the properties are joint.
- 30.** Learned senior counsel appearing for the respondent no.1 submits, by placing reliance on the recital of the family arrangement entered into inter alia between Bijoy Kumar Swaika, Rajeev Swaika (present appellant), Suneel Swaika (present respondent no.1) and Smt. Kusum Swaika, that they were mentioned therein to be the party of the first, second, third and fourth part and being entitled to an undivided 1/4th share each in the HUF.
- 31.** Thus, it is argued that even as per the agreed position between all parties, who were signatories to the family arrangement, upon the demise of Bijoy Kumar Swaika, the Karta and Smt. Kusum Swaika, member of the HUF, the property belonging to

the said HUF has now devolved on the appellant and the respondent no.1, having 50 per cent share each.

- 32.** Thus, it is argued that even as per the documents annexed to the injunction application of the plaintiff/appellant in the trial court, the respondent no.1 has 50 per cent share in the property.
- 33.** Secondly, learned senior counsel argues that the intended sale of his 50 per cent by the respondent no.1 is necessary to recover the expenditure made by the respondent no.1 for the estate of the HUF and in its interest.
- 34.** Accordingly, the respondent no.1 is not attempting to gain any unlawful advantage but merely to recover his dues, spent for the welfare of the estate itself.
- 35.** Thirdly, learned senior counsel contends that there is no bar in law in one of the co-sharers selling his/her share in the joint property.
- 36.** Learned senior counsel appearing for the respondent no.1 submits further that if necessary, the daughter of the respondent no.1, who has been shown in the plaint of the appellant's partition suit to have 1/4th share, can join in to support the case of the respondent no.1.

- 37.** It is reiterated that such distinction of 1/4th share between the respondent no.1 and his daughter, as depicted in the plaint of the present suit, is artificial and contrary to the family arrangement entered into between the parties.
- 38.** Learned senior counsel next argues that the learned Trial Judge was justified in observing that the plaintiff/appellant has no urgency inasmuch as the application for withdrawal of the earlier suit/vacating of the status quo order passed therein was filed as long back as on September 24, 2025, whereas the present suit has been filed only recently in the year 2026.
- 39.** Hence, the appellant cannot claim any urgency all on a sudden, since the primary element in the cause of action for the present suit is the intended withdrawal of the earlier suit, the application for which was filed long back.
- 40.** On such grounds, learned senior counsel contends that the learned Trial Judge was justified in passing the impugned order.
- 41.** In support of his contention, learned counsel for the appellant cites *Maharwal Khewaji Trust (REGD.), Faridkot vs. Baldev Dass* reported at (2004) 8 SCC 488, where the Hon'ble Supreme Court observed, by accepting the submission of counsel for one of the parties, that unless and until a case of irreparable loss or

damage is made out by a party to the suit, the court should not permit the nature of the property being changed, which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.

- 42.** During arguments, this court has put learned counsel for the parties to notice that the judgment rendered by a coordinate Bench of this court in *Muktakeshi Daw's* case, reported at *AIR 1988 CAL 25*, might be considered by the court while adjudicating the present appeal.
- 43.** Upon a careful consideration of the arguments of the parties and a perusal of the materials on record, it transpires that it is an undisputed position that the subject-matter of the present partition suit instituted by the appellant, comprised of the fourth schedule of the arbitral award, is a joint property.
- 44.** The bone of contention is as to the right of the respondent no.1, one of the co-owners, to sell a portion of the property to outsiders.
- 45.** The second friction point is as to the actual share of respondent no.1, at least at the *prima facie* level, in the suit property.

- 46.** To consider the second aspect first, we are to look at the arbitral award as well as the family arrangement in conjunction.
- 47.** In Clause 6(c) of the arbitral award, which was subsequently implemented through the family arrangement, it was categorically mentioned that Ramdas Mahadeo Parsad HUF shall continue to subsist with Sri Bijoy Kumar Swaika as the Karta and co-parcener and Smt. Kusum Swaika as a member thereof (save the properties stated in the second schedule and the third schedule thereunder written).
- 48.** All remaining properties of the said HUF and the controlled companies and concerns and other assets, fully described in the fourth schedule, were to continue to be the properties of the said HUF as before “with heritable and transferable estate absolutely forever”.
- 49.** Rajeev and Suneel, as per the said clause, would not have any right, claim and interest in the said remaining properties described in the fourth schedule thereunder written.
- 50.** There is an apparent conflict between the recital of the subsequent family arrangement which followed and one of the clauses therein.

- 51.** Whereas in one of the paragraphs of the recital, it was recorded that each of the said Bijoy Kumar Swaika, Rajeev Swaika, Suneel Swaika and Smt. Kusum Swaika, being the party of the first part, second part, third part and fourth part, were entitled to an undivided 1/4th share in the said HUF, apparently signifying that on the demise of Bijoy Kumar Swaika and Kusum Swaika subsequently, Rajeev and Suneel would become entitled to 50 per cent each in such property, in a subsequent clause (f), it was reiterated that the award is not a partition and that the parties thereto have simply made an award to resolve the disputes and save the amity and dignity of the family.
- 52.** Simultaneously, it was stipulated that the properties mentioned in the fourth schedule thereunder written would be continued to be held by Ramdas Mahadeo Parsad HUF with Sri Bijoy Kumar Swaika as Karta and coparceners and Smt. Kusum Swaika as a member thereof to the exclusion of any claim, right or interest of Rajeev and Suneel.
- 53.** Thus, at least an arguable question remains as to which of the clauses would prevail.
- 54.** If the first clause mentioned hereinabove is to prevail, the properties, upon the demise of Bijoy and Kusum, would devolve

in moiety shares on Rajeev and Suneel, whereas if clause (f) is to prevail, the property would continue to remain a property of Ramdas Mahadeo Parsad HUF and upon the demise of the Karta and his wife, all the coparceners would have undivided interest in the corpus thereof.

- 55.** If the second view is to be accepted, the daughters of Rajeev and Suneel respectively, who were coparceners as well, would also have shares in the property, thereby defeating the case made out by the respondent no.1 to the effect that the respondent no.1 is the exclusive owner of 50 per cent share in the fourth schedule property.
- 56.** It is well-settled that at the stage of consideration of *ex parte ad interim* injunction prayers, the court is only to look at the case made out in the plaint and the injunction application.
- 57.** As such, proceeding from such perspective, it is the plaint case which has to be taken into consideration.
- 58.** Since the plaintiff places reliance on clause (f) of the family arrangement in effect by arguing that all the parties to the present suit have become co-sharers to the property by dint of being coparceners in the HUF originally, at least an arguable and triable issue has been made out as to whether Suneel and

Rajeev have got by devolution 50 per cent share each in the suit property or whether their daughters and other coparceners also have shares in the property.

- 59.** Thus, a *prima facie* case has been made out to the extent that the above triable issues are to be decided in the suit.
- 60.** Secondly, we find that the learned Trial Judge proceeded on a contradictory premise, in the same breath holding that the jointness of the subject property has been established from the pleadings in the plaint but having refused *ad interim* injunction only on the ground that no urgency has been made out.
- 61.** We differ from such opinion on the face of the materials on record, since the averment of the respondent no.1 in his application for vacating/withdrawal of the earlier suit itself, to the effect that he has already entered into an agreement to sell out his perceived 50 per cent share in the suit property in favour of outsiders, is sufficient to raise a justified apprehension of the imminent transfer of a share of the suit properties by respondent no. 1.
- 62.** With due respect to learned senior counsel appearing for the respondent no.1, we cannot agree with his submission that the urgency was defeated by the delay in filing the suit from the date

of first filing of the withdrawal application, for the following reason:

- 63.** As rightly pointed out by learned counsel appearing for the appellant before us, the learned suit court, in the earlier partition suit, made it clear only by its order dated January 05, 2026 that the application for withdrawal/vacating will be taken up first, without considering the counter claim sought to be made by the present appellant in the said suit.
- 64.** The position would have been otherwise if the counter claim was taken up first, since in such event, the counter claim would continue with the independent trappings of a suit and the appellant might easily have sought for a perpetuation of the status quo order granted initially in the suit, in connection with such counter claim.
- 65.** However, since the withdrawal application has been fixed (we are informed that the next date is tomorrow before the suit court) for hearing and there is every chance that in view of the now-unqualified prayer made by the plaintiff therein to withdraw the suit without liberty to sue afresh, the same would be allowed, such turn of events can itself be construed as a change of circumstance, accelerating the urgency pleaded by the plaintiff.

- 66.** Thus, although the application for withdrawal was pending since long, the immediate urgency occurred on January 05, 2026, when the learned Single Judge decided to take up the withdrawal application without permitting the counter claim of the present appellant to be taken up first.
- 67.** Thus, even on the count of urgency, taking into consideration the above development, in conjunction with the admitted position that the respondent no.1 has already entered into an agreement for sale of his perceived 50 per cent of the property, which is also disputed, in favour of third parties, judicial propriety demands that the property is maintained *in statu quo* during pendency of the partition suit.
- 68.** Such view was also reiterated in *Muktakeshi Daw (supra)*, where a question arose as to whether in view of the protection given by Section 52 of the Transfer of Property Act an injunction was further necessary. The Division Bench, upon considering the circumstances of the case and the position of law, came to the conclusion that Section 52 by itself is not a bar to grant of injunction, which can in any event be granted in order to prevent multiplicity of proceedings and to protect the interest of the parties to the suit.

- 69.** In the present case as well, the *ad interim* injunction sought by the appellant is in aid of the temporary injunction application as well as the partition suit and since even as per the view of the learned Trial Judge, a sufficiently strong *prima facie* case has been made out regarding the suit property being of joint character, judicial prudence demanded that at least a status quo order should have been passed in respect of the suit property at the *ad interim* stage.
- 70.** In view of the above, FMAT 55 of 2026 is allowed on contest against the respondent no. 1 and *ex parte* against the others, thereby setting aside the impugned order, bearing Order No.1 dated February 05, 2026 passed by the learned Civil Judge (Senior Division), Third Court, Alipore, District: South 24 Parganas in Title Suit No. 174 of 2026 and directing both parties to maintain status quo in respect of the suit property till disposal of the temporary injunction application pending in connection with the said suit.
- 71.** In the event the respondent no.1, the primary contesting respondent, files his written objection to the temporary injunction application in the suit within a fortnight from date, the learned Trial Judge shall make all endeavour to dispose of

the temporary injunction application as expeditiously thereafter as possible, preferably within four weeks thereafter.

- 72.** It is made clear that this Court has not conclusively determined any of the questions involved in the temporary injunction application or the pending partition suit of the appellant and the learned Trial Judge will be at liberty to dispose of both independently on their own merits and in accordance with law, without being unduly influenced in any manner by any of the observations made hereinabove.
- 73.** Consequentially, CAN 1 of 2026 is also disposed of.
- 74.** There will be no order as to costs.
- 75.** 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.)