

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya

And

The Hon'ble Mr. Justice Biswaroop Chowdhury

FMAT 109 of 2026

With

CAN 1 of 2026

Madhab Chandra Basu

Vs.

Safikul Molla

For the appellant : Mr. Rabindra Narayan Dutta,

Mr. Sibasis Ghosh,
Mr. Ardhendu Nag,
Mr. Hare Krishna Halder,
Mr. Koushik Bhattacharyya,
Mr. Soham Banerjee, Advs.

For the respondent : Mr. Aniruddha Chatterjee, Snr. Adv.,
Mr. Rajdeep Bhattacharya,
Sk. Abumusa,
Mr. Masadur Rahaman, Advs.

Heard on : 09.04.2026

Judgment on : 09.04.2026

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred by the defendant in a suit for specific performance of an oral agreement for sale, for permanent injunction and other consequential reliefs. By the impugned order, the learned Trial Judge granted ad-interim injunction against the defendant/present appellant and his men, agents and assigns from transferring, alienating, changing the nature and character,

encumbering and/or creating any third party interest in respect of the suit property for a limited period.

2. Learned Counsel appearing for the defendant/appellant argues that the learned Trial Judge was debarred by law from passing such order on the basis of an unstamped and unregistered agreement. Apart from the fact that the agreement pleaded was oral and did not give rise to a concluded contract, it is contended that for obtaining an order of injunction, it is mandatory that an agreement for sale has to be stamped properly and registered. In support of his arguments, learned counsel for the appellant cites several judgments which we are dealing with as follows:-
3. The first judgment cited is in the matter of *Yellapu Uma Maheswari vs. Buddha Jagadheeswararao* reported at 2016 (2) CHN (SC) 28. However, we are unable to agree with the contention of the appellant that the said judgment is a binding precedent in the present matter.
4. The facts of the case as narrated therein clearly indicate that the matter arose before the Hon'ble Supreme Court from a partition suit.
5. The Hon'ble Supreme Court, after considering Section 49 of the Registration Act, 1908, came to the finding that Section 17(1)(b) of the Registration Act mandates that any document which has the effect of creating and taking away rights in respect of an immovable property must be registered and Section 49 of the Act imposes a bar on the admissibility of unregistered documents that are required to be registered under Section 17 of the Act.

6. However, there is a difference between a suit for specific performance and suits of other nature. Such distinction is drawn not by us but by the proviso to Section 49 of the Registration Act itself.
7. The main body of Section 49 of the said Act debars any document required under Section 17 of the Act to be registered from being received as evidence of any transaction affecting such property or conferring such power. However, the proviso thereto carves out an exception thereto insofar as suits for specific performance are concerned.
8. However, the proviso thereto stipulates that an unregistered document affecting immovable property and required by the Registration Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1887 (since amended) or as evidence of any collateral transaction not required to be effected by registered instrument. Thus, the proviso to Section 49 carves out a clear exception to the general proposition that documents which are required to be mandatorily registered, unless so done, shall not be accepted in evidence. Hence, the bar stipulated in Section 17, read with Section 49, is not applicable to the present case as opposed to the case from which the cited judgment arose. Thus, the said judgment cannot be a germane precedent in the present context.

9. Insofar as *Avinash Kumar Chauhan vs. Vijay Krishna Mishra* reported at (2009) 2 SCC 532 is concerned, in the said case, the Hon'ble Supreme Court observed, on a composite reading of Sections 33, 35 and 36 of the Stamp Act, that the court has the power to pass an order in terms of Section 35 of the Stamp Act irrespective of the objection as to admissibility of an unstamped document being waived under Section 36 of the said Act.
10. However, it is to be noted that the said matter arose from an order directing the impoundment of a document.
11. Such stage has not yet arrived in the suit in question.
12. In any event, before production of a document in evidence, it is open to the Trial Court to direct such document to be impounded.
13. More importantly, in the case at hand, the agreement relied on by the plaintiff/respondent was oral and as such, in the absence of such agreement being reduced to writing, the provisions of either the Stamp Act or the Registration Act cannot be attracted thereto.
14. We take note of the fact that there is no statute which mandates every agreement for sale to be reduced to writing. Rather, the language of Section 10 of the Indian Contract Act is wide enough to encompass any sort of reciprocal promises within the ambit of a concluded contract between the parties, without putting any restriction regarding such contract being mandatorily to be in writing. Hence, the ratio of the cited reports is not applicable to the present case in such light as well.

15. In *Bidyut Sarkar & Anr. Vs. Kanchilal Pal (dead) Through LRs. & Anr.* reported at 2025(1) ICC 534 (S.C.), the Hon'ble Supreme Court was concerned with the effect of Section 36 of the Stamp Act and observed that an insufficiently stamped document was rightfully barred from being admitted as evidence in the absence of requisite stamp duty.
16. In the said matter, however, the Hon'ble Supreme Court recorded that the argument advanced on behalf of the plaintiff that he would be entitled to get the benefit of Section 36 of the Stamp Act as the document had been exhibited and admitted in evidence, held no ground inasmuch the document was found to be insufficiently stamped and was marked as exhibit with objection and that objection having not been removed or cured, no benefit of Section 36 of the Stamp Act could be extended to the plaintiff/respondent no. 1. In any event, the said ratio is not applicable to the present case, which arises out of the grant of an ad-interim injunction. It would be premature, at this stage, to observe that despite getting an opportunity and the document having been exhibited with objection, the plaintiff did not remove or cure the defect regarding stamp. Hence, the said judgment does not carry any separate effect as a binding precedent, insofar as the present appeal is concerned.
17. We are unable to agree, with utmost respect, with the learned Single Judge passing the judgment in *Chamibai and Ors. vs. Siddhnath and Ors.*, (2025: MPHC-IND: 5866), cited by the learned Advocate for the

appellant. In the said matter, the learned Single Judge observed that even at the stage of temporary injunction in a suit for specific performance, the document is mandatorily required to be registered and stamped. In view of our above discussions, and in the light of the proviso to Section 49 of the Registration Act, the said judgment does not lay down the correct proposition of law.

18. In *Srinivas Adhikeshavulu Dalvai vs. M/s Anushka Constructions Pvt. Ltd.* reported at 2025(3) ICC 202 (Karn.), a learned Single Judge of the Karnataka High Court had held that the defendant therein was a mere holder of an agreement for sale and MOU but those documents were unregistered ones. It was further observed that if the agreement of sale and MOU were registered and if the defendant was claiming that he had handed over possession of the property, then it could have been accepted. Though the agreement of sale and MOU were relating to the sale deed of plaintiff and those documents were unregistered ones, it could not be presumed, it was held, that the defendant was in possession over the property. Thus, the premise of consideration in the said case was entirely different from the present case.
19. As such, we do not find any substance in the proposition of the appellant that the impugned order is *ex facie* barred by law, in view of the fact that the agreement relied on by the plaintiff/respondent was an oral one and that Section 49, proviso of the Registration Act applies in any case in a suit for specific performance and permits the

Court to take cognizance of and act upon even an unregistered agreement in such a suit.

20. Even otherwise, we do not find any reason to interfere at this stage, since at the stage of grant of *ex parte* ad-interim injunction, the Court is only to look into the pleadings of the plaint and the temporary injunction application as well as documents furnished therewith.
21. On such premise, we find that the learned Trial Judge was justified in passing an order of ad-interim injunction, thereby protecting the subject property, since a sufficient prima facie case was made out and the other legal tests for grant of ad interim injunction were also satisfied.
22. Hence, FMAT 109 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
23. CAN 1 of 2026 is consequentially disposed of.
24. There will be no order as to costs.
25. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Biswaroop Chowdhury, J.)

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(SSS)