

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. 708 of 2025
IA No: CAN 1 of 2025

Tarun Kumar Ghosh and another
Vs.
Ashoke Kumar Ghosh and another

For the appellants	:	Mr. Piyush Chaturvedi, Sr. Adv. Mr, Tarak Nath Halder, Adv.
For the respondent no.1	:	Mr. Ayan Banerjee, Ms. Madhumita Patra, Adv.
Heard on	:	23.03.2026
Judgment on	:	23.03.2026

Sabyasachi Bhattacharyya, J.:-

1. In view of arguable questions being involved, to be indicated below, the appeal is admitted to be heard on the grounds taken in the Memorandum of Appeal.

2. Since we have substantially heard the issues involved on merits, we take up the appeal itself for adjudication along with the application.
3. The appeal arises out of a temporary injunction order passed in connection with a suit for partition. In the said suit, declaration of title has also been sought.
4. Learned senior counsel appearing for the defendant nos.1 and 2/appellants points out that implicit in the declaration of title sought in the partition suit was a declaration that certain properties, which are the subject-matter of the suit, were purchased by the plaintiff/respondent no.1 *benami*, in the name of the defendant no.1, who was a mere name-lender, although the funds for the purchase were supplied by the plaintiff.
5. Learned senior counsel argues that the learned Trial Judge completely overlooked the bar under Section 4 of the Prohibition of the Benami Property Transactions Act, 1988 (hereinafter referred to as 'the 1988 Act') in granting injunction.
6. Secondly, it is argued that the defendants pointed out in their written objection to the injunction application that a preemption suit has been filed in respect of a sale deed executed by the defendant no.1 in favour of his wife, the defendant no.2

(appellants herein), thereby admitting the title of the plaintiff no.1 in the suit property.

7. Thus, having taken a contrary stand admitting the title of defendant/appellant no.1, the plaintiff/respondent no.1 could not have asserted his title to the suit property.
8. Learned senior counsel argues that this is not a case of a partition suit simpliciter, where declaration of title of the parties is implicit, but the title of the true owner of the property, as evident from the title deeds themselves, has been sought to be dislodged on the ground of *benami*, which is patently barred by law.
9. Learned senior counsel next points out that apparently an agreement of 2010 was relied on by the plaintiff/respondent in the trial court.
10. However, such deed could not have been an indicator of the urgency involved in an injunction application filed in the year 2020.
11. It is further argued that the deeds-in-question, which stand in the name of the defendant/appellant no.1, were of the year 2005 -2006, whereas the suit was filed only in the year 2020.
12. Thus, in the absence of any case of urgency or irreparable injury having been made out, it is argued that the learned Trial Judge

erred in law in granting injunction in favour of the plaintiff/respondent no.1.

13. Learned counsel appearing for the plaintiff/respondent no.1, in reply, places reliance on an unreported judgment of the Hon'ble Supreme Court in the matter of *Smt. Shaifali Gupta vs. Smt. Vidya Devi Gupta and others* [Special Leave Petition (Civil) No.4674 of 2023] where, while adjudicating on the rejection of a plaint under Order VII Rule 11 of the Code of Civil Procedure, the Hon'ble Supreme Court observed, *inter alia*, that the plaint allegations all through described the suit properties as the Joint Hindu Family properties and alleged that they had been purchased either from the nucleus of the Joint Hindu Family property or the income derived from the joint family business.
14. The properties, it was held, were not described as *benami* in the name of any member of the family. Therefore, "from the plaint reading, the suit properties could not be *ex facie* held to be *benami* properties in respect whereof the suit may not be maintainable in view of Section 4 of the Benami Act".
15. In such context, the Hon'ble Supreme Court observed that the court was required to consider whether the transactions came within the exceptions envisaged in Sections 2(8) and 2(9) of the

1988 Act, which was held to be a mixed question of fact and law to be decided on evidence at the final hearing of the suit.

- 16.** In the present case, it is submitted, the plaintiff has made out a case that a sweetmeat shop, which originally belonged to the father of the plaintiff/respondent no.1 and defendant/appellant no.1 as well as the proforma defendant no.3/proforma respondent, was jointly run by the said parties.
- 17.** Subsequently, as per the plaint, a real estate/land transaction business was started from the funds of the said sweetmeat shop business.
- 18.** As per the plaint, it is argued, the properties-in-question were primarily purchased from the funds of the said joint family business.
- 19.** In such context, learned counsel for the plaintiff/respondent no.1 submits, the dispute raised in the suit comes within the exception clause envisaged in Section 2(9)(A)(b)(ii) of the 1988 Act, as per which a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity, including a trustee, executor, partner, Director of a Company etc., is exempted from the bar contemplated in the Act.
- 20.** Learned counsel appearing for the plaintiff/respondent no.1 next submits, by handing over a copy of an agreement of 2010, that

by dint of the same, all the co-owners of the suit properties, that is, the three brothers, being the plaintiff, defendant no.1 and proforma defendant no.3 in the suit, agreed that the properties-in-question were purchased from the funds of the joint real estate business, which could, in turn, be sourced to the income from the joint sweetmeat shop business of the parties, which is a family business.

- 21.** Hence, it is argued that sufficient *prima facie* case was made out before the learned Trial Judge, to establish that the suit properties are joint properties of the parties, for the latter to pass the impugned order of temporary injunction.
- 22.** Upon hearing learned counsel for the parties, we find that at this stage, it would not be appropriate to conclusively hold that the suit is *ex facie* barred by the prohibition contemplated under Section 4(1) of the 1988 Act.
- 23.** As rightly contended by the plaintiff/respondent no.1, Section 2(9)(A)(b), sub-clause (ii) carves out a niche for a person standing in fiduciary capacity for the benefit of another to be exempted from the operation of the said bar.
- 24.** From the illustrations given in the said sub-clause, it is found that jural relationships in the nature of partners are also contemplated therein, as are agents.

- 25.** Going by the plaint case in the present case, the claim of the plaintiff is premised on the averment that the subject properties were substantially purchased from the joint funds derived from the real estate business run by the parties which, in turn, has its capital sourced from the sweetmeat shop business of the parties. Thus, *prima facie*, the parties stand in fiduciary capacity *inter se* insofar as the property transactions from the joint business funds are concerned.
- 26.** Insofar as the allegations made in paragraph no.5 of the plaint are concerned, on which much reliance is placed by learned senior counsel appearing for the appellants, we find that although initially it has been pleaded in the said paragraph that the plaintiff paid the consideration of the property mentioned therein, despite the same standing in the name of the defendant no.1, simultaneously, the plaintiff has also pleaded that the said consideration amount was paid in instalments by the plaintiff from the income of his business, which has been directly related to the land transaction/real estate business jointly run by the parties.
- 27.** Thus, from the pleadings in the plaint and the temporary injunction application filed in the trial court, it cannot be said that the suit is *ex facie* barred by Section 4 of the 1988 Act.

- 28.** As held by the Hon'ble Supreme Court in *Smt. Shaifali Gupta (supra)*, if the question pertains to whether the exception clause under Section 2(9) of the 1988 Act applies, the same is a mixed question of fact and law, which is required to be decided on evidence at the final hearing of the suit.
- 29.** Although the said decision was rendered in the context of an application under Order VII Rule 11 of the Code, which is different in scope than an injunction application, the principle laid down therein still holds good inasmuch as if an arguable or triable issue is raised on a mixed question of law and fact, which is to be decided by trial on evidence in the suit, it has to be held that a sufficient *prima facie* case for grant of injunction has been made out.
- 30.** Moreover, we cannot overlook at this stage the agreement of 2010 produced by the plaintiff/respondent no.1, which *prima facie* evidences the agreement between the contesting parties as to the properties-in-question being purchased from the joint funds of the businesses of the family.
- 31.** Insofar as the argument of the appellants regarding dearth of urgency is concerned, going by the averments made in the plaint, the cause of action of the suit arose when the plaintiff/respondent no.1 approached the defendant nos. 1 and

2/appellants for partition of the property and it was given out by the said defendants that a transfer deed has been executed by the defendant/appellant no.1 in favour of his wife, defendant/appellant no.2.

- 32.** At the earliest after such event, the suit was filed along with the injunction application.
- 33.** As such, a *prima facie* case of urgency has also been made out.
- 34.** Even otherwise, it is a well-settled principle of law that in a suit for partition, the endeavour of the court is to maintain the property *in statu quo* till disposal of the *lis* in order to avoid multiplicity of proceedings as well as to obviate irreversible alterations to the title and character of the subject property.
- 35.** Keeping in view such settled proposition of law, this court is of the opinion that the trial court adopted one of the plausible views on the basis of the materials before it and there is no scope of interference by the appellate court merely to substitute its own views for that of the trial court, in the absence of any legal error in the impugned order.
- 36.** Hence, the appeal fails.
- 37.** FMA 708 of 2025 is dismissed on contest without any order as to costs, thereby affirming the impugned order, bearing Order No.42 dated October 7, 2024, passed by the learned Civil Judge

(Senior Division), Second Court at Chinsura, District- Hooghly in Title Suit No.204 of 2020.

- 38.** CAN 1 of 2025 is accordingly disposed of as well.
- 39.** It is made clear that all the aforesaid findings are tentative in nature, arrived at only for the purpose of adjudicating the appeal from a temporary injunction order, and it will be open to the learned Trial Judge to decide all issues involved in the suit independently and in accordance with law, without being unnecessarily influenced by any of the observations.
- 40.** 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.)

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