

D/L.10.
May 13, 2026.
MNS.

FMAT No. 146 of 2026

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CAN 1 of 2026

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CAN 2 of 2026

Sk. Nur Mohammad

Vs.

Sekh Abul Kalam Azad and others

Mr. Muktakash Das,
Mr. A. Banerjee, Advs.

... for the appellants.

1. The present appeal has been preferred against an ad interim order of injunction granted in connection with a partition suit filed by the plaintiffs/respondents.
2. Learned counsel for the defendant/appellant submits that as per the averments of the plaint and the injunction application, demarcated portions were transferred in favour of the different parties and the parties are in possession of their separate portions out of the total suit property.
3. In such view of the matter, it is argued that the construction to be made by the appellant on the appellant's portion ought not to have been enjoined by the learned trial Judge.
4. Secondly, it is submitted that the appellant is of meager financial means and has got the benefit of a housing scheme by the name "Bangla Abaas Yojona".

5. It is submitted that if the injunction subsists, the tenure of such benefit will expire, which will be detrimental to the appellant.

6. However, at the stage of considering an appeal against an ad interim injunction, the court can only look into the averments made in the temporary injunction application and base its findings on the same.

7. From the averments made in the temporary injunction application as well as the plaint, we find that although it has been admitted that separate portions were transferred to different co-owners, still, there is nothing in the pleadings to indicate that there was, ever, any partition by metes and bounds, thus rendering the partition suit maintainable.

8. Insofar as the other aspect is concerned, regarding the benefit of housing scheme allegedly given to the appellant, nothing in that regard is still on the records of the trial court. At this juncture, therefore, the prudent course of action for the appellant would be to file his written objection to the temporary injunction application in the trial court and for the learned trial Judge to take up the said application as soon as possible.

9. However, no interference is called for at this stage since the learned trial Judge, on the basis of the averments before the said court, was justified in passing the ad interim injunction, keeping in view that the suit is one for partition and the suit property is required to be preserved pending the *lis*.

10. Hence, FMAT No. 146 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

11. CAN 1 of 2026 and CAN 2 of 2026 are also disposed of consequentially.

12. It is made clear that if the defendant/appellant files his written objection to the temporary injunction in the trial court by May 18, 2026, with an advance copy to the plaintiffs/respondents and/or their learned Advocate in the trial Court, the learned trial Judge shall positively take up for hearing the injunction application on the returnable date (which, we are apprised, is May 21, 2026) and shall dispose of the injunction application as expeditiously as possible.

13. There will be no order as to costs.

14. Urgent certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.) (Sabyasachi Bhattacharyya, J.)