

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

FMA 1778 of 2025
IA No: CAN 1 of 2025

Anikesh Das (Minor), represented through his natural
guardian Bobby Das (Mother) and others
Vs.
Jaba Das and others

For the appellants : Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee,
Mr. Romit Bose

For the respondent nos.7,
19 to 30, 32, 36 to 38 : Mr. Jayanta Kr. Mondal,
Mr. Sayantan Rakshit

Heard on : 29.06.2026

Judgment on : 29.06.2026

Sabyasachi Bhattacharyya, J.:-

1. Affidavits in opposition and reply filed today be kept on record.
2. In view of the short questions involved in the appeal, we take up the appeal for hearing along with the application.
3. The learned Trial Judge, by the impugned order, dismissed an application for temporary injunction filed by the plaintiffs/appellants in connection with a partition suit, primarily on the ground that the

appellants could not establish that the respondents are making construction in excess of their shares and in the best portion of the suit property and also that the suit is not bad for non-joinder of necessary parties, as alleged by the defendants/respondents.

4. Learned counsel for the appellants submits that although certain names have been sought to be disclosed in the affidavit-in-opposition filed before this Court, no specifics were disclosed in the Trial Court as to the omitted parties. That apart, the question as to whether the respondents are trying to make construction over the best portion or in excess of their shares can only be resolved by trial on evidence at the stage of final hearing of the suit.
5. Learned counsel for the respondents, on the other hand, places reliance on the averments made in the plaint and the temporary injunction application made by the appellants in the Trial Court and submits that several persons who are admittedly co-owners of the property, including Kamala Sarkar (since deceased according to the respondents) and Minati Sarkar, have not been impleaded in the suit.
6. Even otherwise, we find from certain paragraphs of the written statement, such as paragraph nos. 49, 53, etc. that certain persons have apparently been named to be co-sharers in the property but have been omitted to be impleaded in the suit.
7. However, the learned Trial Judge, while deciding the injunction application, merely observed in a cryptic fashion that the suit is bad for non-joinder of necessary parties, without advertng to the specific

averments made by the parties in that regard and/or considering whether there was any material produced before the Court to come to the conclusion even *prima facie* that certain other parties have title/shares in the suit property and, as such, the suit was bad for non-joinder of such specific persons.

8. Accordingly, the matter is required to be reheard on merits in order for the Trial Court to advert to the pleadings of the parties in the temporary injunction application and written objection as well as the plaint and the written statement and come to the definite conclusion as to whether the suit is *prima facie* barred by non-joinder of necessary parties and, if so, who are such necessary parties and the materials on the basis of which such conclusion is arrived at.
9. Insofar as the other ground is concerned, however, the appellants are justified in arguing that the details of how far the respondents are exceeding their shares in the property, if at all, in making constructions and/or whether they are making such construction over the best portion of the property, can only be conclusively proved at the trial of the suit. At this stage, it would suffice to say that since all the co-sharers have right, title and interest over every inch of the suit property till the same is properly partitioned by metes and bounds, the endeavour of the Court should have been to maintain the property *in statu quo* till disposal of the matter.
10. Thus, although a *prima facie* case for grant of injunction is made out, the learned Trial Judge is required to come to specific conclusion even

at the *prima facie* stage as to whether the suit is bad for non-joinder of necessary parties.

11. Accordingly, FMA 1778 of 2025 is partially allowed on contest, thereby setting aside the impugned order bearing Order No. 29 dated June 16, 2025 passed by the learned Civil Judge (Senior Division) at Jangipur, District: Murshidabad in Partition Suit No. 16 of 2022 and remanding the temporary injunction application to the Trial Court for a fresh adjudication on merits, upon adverting to the pleadings in the temporary injunction application and the written objection thereto as well as the plaint and written statement and the materials which were produced before the learned Trial Judge at the juncture when the impugned order was passed.
12. During pendency of the injunction application after remand, the parties shall maintain status quo as regards the suit property as a whole.
13. However, the learned Trial Judge shall not be influenced, while re-adjudicating the temporary injunction application, by any of the observations made herein or the observations made in the order impugned before us, which are tentative in nature.
14. It is expected that in view of the urgency involved, the learned Trial Judge shall dispose of the injunction application afresh upon remand as expeditiously as possible, positively within four weeks from the date of communication of this order to the learned Trial Judge, if necessary upon giving further hearing to the parties.

15. CAN 1 of 2025 is accordingly disposed of as well.
16. There will be no order as to costs.
17. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)