Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Md. Shabbar Rashidi

FMA 920 of 2026
with
CAN 1 of 2026

Biswajit Dutta
Vs.
Malati Dutta and Ors.

For the appellant	:	Ms. Manali Biswas, Adv.
For the respondent nos. 1, 2 and 3	:	Mr. Shounak Mukhopadhyay, Ms. Rumki Guha, Advs.
Heard on	:	November 12, 2026.
Judgment on	:	November 12, 2026.

Sabyasachi Bhattacharyya, J.:

1. Affidavit of service filed today be kept on record.

2. The appeal is admitted, to be heard on the grounds taken in the memorandum, and is taken up for hearing on consent of both parties.

3. The appellant, being the plaintiff, filed a suit for partition, in connection with which an injunction application was also filed for restraining the defendants/respondents from creating any third party interest as well as from changing the nature and character of the suit property.

4. Initially, an ad-interim injunction was granted. Subsequently, however, upon the defendants filing their written objection and disclosing certain facts, the injunction application was dismissed by the impugned order, giving rise to the present appeal.

5. Learned counsel for the appellant argues that the premise on which the prayer for injunction was refused by the learned Trial Judge was that an earlier suit had been filed for the self-same relief of partition by the plaintiff, during the subsistence of which the present suit was filed. However, on August 2, 2024, the date on which the present suit was filed, an application had already been filed before the court where the previous suit was pending, seeking withdrawal of the said suit. The said application for withdrawal, it is

submitted, was filed at 10.30 a.m and was fixed for hearing at 2.00 p.m. the same date.

6. In such circumstances, the ad-interim order was passed in the present suit.

7. However, subsequently, such withdrawal application has been allowed and the earlier suit has been dismissed as withdrawn. Thus, it is submitted that when the temporary injunction application was taken up for hearing and the present impugned order was passed, there was no subsisting previous suit at all.

8. Hence, it is argued that the learned Trial Judge erred in law in dismissing the injunction application merely on the ground of such so-called suppression.

9. Learned counsel for the defendants/respondents argues that injunction is an equitable relief and since the plaintiff did not come with clean hands, the learned Trial Judge was justified in refusing injunction.

10. Learned counsel places reliance on *Gujarat Bottling Co. Ltd. and Ors. vs. Coca Cola Co. and Ors.* reported at *(1995) 5 SCC 545* where the Hon'ble Supreme Court recorded that the jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and therefore, the court, on being

approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the court and may refuse to interfere unless his conduct was free from blame. It was further observed that since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest.

11. Thus, it is argued that the present plaintiff, having approached the court by filing the present suit on suppression of the earlier suit, ought to have been refused injunction.

12. Secondly, learned counsel for the respondents argues that the earlier suit was also bad for non-joinder of necessary parties, upon which facet of the case being pointed out in the written objection filed by the defendants in the earlier suit, the plaintiff grew wiser and surreptitiously filed the present suit and obtained an *ex parte* order of injunction. Although the left-out parties have been added to the present suit, such conduct is contrary to equity.

13. Thirdly, it is contended that the plaintiff himself transferred portions of the suit property in favour of the newly added parties

during subsistence of an injunction order, thus being also guilty of coming with unclean hands and of *mala fides*.

14. It is submitted that such a party ought not to be favoured with an order of injunction by a court of equity.

15. Insofar as the question of suppression is concerned, the same could, in the circumstances of the present case, be a relevant factor if an application was filed by the defendants under Order XXXIX Rule 4 of the Code of Civil Procedure, for vacating the ad-interim order of injunction on the ground of suppression of material facts. However, the considerations are different between the ad-interim stage of an injunction application and the final hearing stage. On the date when the temporary injunction application was taken up for final hearing, fact remained that the earlier suit had already been withdrawn by the plaintiff.

16. The cause of action is continuing insofar as partition is concerned. Thus, the plaintiff could very well have filed a new suit on the date when the present impugned order was passed, upon impleading the parties omitted in the earlier suit. Hence, it would only be an exercise in futility if the plaintiff was forced to file a different suit unnecessarily whereas the present suit was already pending. Hence, since there was no subsisting earlier suit on the

date when the present impugned order was passed, the learned Trial Judge erred in law in taking into consideration such apparent suppression of the pendency of the earlier suit, which had been rendered academic in the meantime, in refusing injunction on such sole ground.

17. However, insofar as the alleged transfer of portions of the suit property by the plaintiff in contravention of a subsisting injunction order is concerned, as alleged by learned counsel for the respondents, the same also gives rise to the question as to whether the plaintiff came with clean hands, and, as such, was entitled to an equitable relief like injunction. Be that as it may, since the learned Trial Judge did not deal with such issue or the other issues between the parties on the merits of the matter, this Court is loath to arrogate to itself the powers of the Trial Court and become the first forum adjudicating such issues, which would rob the parties of a further forum of challenge.

18. Thus, the ends of justice demand that the injunction application is relegated for a fresh adjudication to the Trial Court for consideration of the said issue and the other issues involved.

19. However, insofar as alleged suppression of the pendency of the earlier suit was concerned, the same was rendered academic on

the date when the temporary injunction application was finally taken up for hearing, in view of the earlier suit being already withdrawn in the meantime.

20. Accordingly, FMA 920 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order no. 11 dated June 23, 2026 passed by the learned Civil Judge (Senior Division), First Court at Berhampore, District – Murshidabad in Partition Suit no. 450 of 2024, and granting an order of injunction restraining both parties from selling, transferring, alienating and/or creating any third party interest in respect of the suit property as well as changing the nature and character thereof till disposal of the temporary injunction application afresh by the Trial Court.

21. The injunction application is hereby remanded to the Trial Court for a fresh adjudication on merits in the light of the above observations. It is made clear that all questions are kept open for being decided by the learned Trial Judge on the premise of the injunction application and the written objection filed thereto in the Trial Court as well as all the materials placed before the Trial Court.

22. It is expected that such fresh adjudication of the injunction application shall be concluded at the earliest, preferably within one

working month from the date of communication of this order to the Trial Court.

23. CAN 1 of 2026 is consequentially disposed of as well.

24. There will be no order as to costs.

25. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

I agree. (**Sabyasachi Bhattacharyya, J**.)

(**Md. Shabbar Rashidi, J**.)

AD-22
Ct No.16
(SSS)