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 Sandip Kumar De

FMA No. 1226 of 2026
+
CAN 1 of 2026

Sk. Ekramul Haque and another
Vs.
Sri Rajat Kar and others

For the appellants : Mr. Gopal Chandra Ghosh, Sr. Adv.,
Ms. Suravi Ghosh, Adv.

For the respondent no. 1 : Mr. Debrup Bhattacharjee, Adv.

Heard on : 05.10.2026.

Judgment on : 05.10.2026.

Sabyasachi Bhattacharyya, J.:-

1. The affidavit-of-service filed today be kept on record.

2. In view of the short points involved, we take up the appeal along with the application together for hearing.

3. Learned senior counsel appearing for the appellants argues that out of 13 decimals share of the respondent no. 1 in the suit property, which in total is comprised of 26 decimals, 12.5 decimals were sold by the

respondent no. 1 by specific demarcation to the appellants, retaining only .5 decimals share in the property.

4. It is submitted that thereafter, the appellants have obtained sanction plan from the local Panchayat and have started construction over their said purchased property.

5. From the Commissioner's report, it will be evident that 11 pillars had already been constructed at that juncture.

6. It is also pointed out by learned senior counsel for the appellants that the respondent no. 1 himself signed the plan annexed to the transfer deed executed by the respondent no. 1 in favour of the appellants, which corroborates the submissions made above.

7. Despite the same, after commencement of construction and substantial progress in the same, the respondent no. 1 filed the present partition suit and obtained an order of *status quo*, which is impugned before this Court in the present appeal.

8. It is thus argued that the balance of convenience and inconvenience is in favour of refusal to grant injunction and the learned Trial Judge did not take into consideration the above factors while granting *status quo*.

9. Learned counsel appearing for the respondent no. 1 argues that the respondent no. 1 has retained .5 decimals share in the suit property and, as such, is entitled to every inch of the said property, commensurate with his share.

10. Moreover, it is contended that in a partition suit, the endeavour of the court ought to be to retain the property in its present character till disposal of the suit.

11. Learned counsel for the respondent no. 1 argues that the respondent no. 1 did not sign the so-called sanction plan obtained by the appellants at any point of time. Thus, no consent was given by the respondent no. 1 to the construction.

12. It is further argued that if the appellants are permitted to construct over a substantial portion of the suit property, the rights of the respondent no. 1 therein shall be hampered.

13. Upon a careful perusal of the materials before us, we find that the respondent no. 1 put his signature on the deed plan annexed to the transfer deed executed by the respondent no. 1 in favour of the appellants. From the said plan, it is evident that the intention of the respondent no. 1 was to transfer a demarcated portion of the subject property, although no partition by metes and bounds has been effected in respect of the property.

14. Thus, the respondent no. 1 cannot resile from that position at this juncture.

15. Moreover, even at the time of passing of the *status quo* order, substantial progress had already been made in respect of the construction on the suit property.

16. The appellants, acting on the impression given by the respondent no. 1 that a demarcated portion has been transferred in their favour, commenced such construction upon investing substantial amounts of money for construction materials as well as labour and also obtained a sanction plan duly from the concerned authority.

17. If at that juncture, on the strength of the miniscule share retained by the respondent no. 1 in the suit property, if the said construction is stalled, the appellants would be severely prejudiced.

18. Thus, the balance of convenience and inconvenience lies in favour of refusal of injunction.

19. Even otherwise, if the construction being made by the appellants is stopped at this point of time, the land over which the construction has already been substantially commenced would not be capable of use by any of the parties even at this stage.

20. Thus, no useful purpose would be served in unnecessarily restraining the appellants from completing the construction.

21. Learned counsel for the respondent no. 1 even submits that the construction has been completed in the meantime and an application has been taken out by the respondent no. 1 for demolition of the same on the ground that the same has been made in violation of the *status quo* order prevalent at the relevant point of time.

22. Be that as it may, since the respondent no. 1 himself contends that the construction has been completed, the respondent no. 1 could not be benefited in any manner if the *status quo* order is sustained.

23. Thus, on the above grounds, we do not find any irreparable injury to be suffered by the respondent no. 1 if injunction is not granted; rather, it would be the appellants who would immensely in the event the construction is stopped at this advanced stage of construction.

24. However, this Court is of the opinion that the appellants ought not to be permitted at this stage to create third party interests in respect of the

constructed property. Also, whatever be the outcome of the present appeal, the same cannot prejudice the fate of the application filed by the respondent no. 1 for demolition of the constructed portion on the ground that the same has been raised in violation of the *status quo* order.

25. In view of the above, FMA No. 1226 of 2026 is partially allowed, thereby modifying the impugned order, bearing order no. 18, dated June 15, 2026 passed by the learned Civil Judge (Senior Division) at Arambagh, District-Hooghly, in Partition Suit No. 136 of 2025, by restraining the appellants from creating any third party interest in respect of the suit property till disposal of the suit.

26. However, there shall be no impediment to the appellants completing the construction, subject to the rider that in the event the constructed portion is ultimately allotted to any other party than the appellants, the appellants shall, if so directed by the learned Trial Judge, demolish the said construction at their own costs.

27. Moreover, the appellants shall not claim any special equity for the construction raised by them on the suit property, which construction will be entirely at the cost of the appellants themselves.

28. The above judgment, however, shall be subject to the outcome of the pending application at the behest of the respondent no. 1 for demolition of the suit property on the sole ground that the construction has been raised in violation of the *status quo* order.

29. Consequentially, CAN 1 of 2026 is also disposed of.

30. There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)