

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 1570 of 2025
IA No: CAN 1 of 2025

Bipad Taran Jana
Vs.
Subhashis Ghorai and others

For the appellant	:	Mr. Gautam Das, Mr. Nirmalendu Patra
For the respondents	:	Mr. Dyutiman Banerjee, Mr. Supriyo Shasmal, Mr. Debjit Dutta
Heard on	:	23.03.2026 & 24.03.2026
Judgment on	:	24.03.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises out of the dismissal of a temporary injunction application filed by the plaintiff/appellant in a suit for partition instituted by the appellant. Initially, vide Order No. 3 dated April 05, 2023, the learned Trial Judge had granted ad interim injunction directing both parties to maintain status quo in respect of the nature, character and possession of the suit property, which was

extended from time to time and ultimately culminated in the impugned order dated August 09, 2023, when the injunction application itself was dismissed on contest.

2. Learned counsel for the appellant submits that the appellant had previously filed an application under Section 144 of the Code of Criminal Procedure in connection with which, vide order dated November 01, 2022, the nature and character of the subject property was directed not to be changed without lawful permission of the appropriate authority.
3. It is submitted that even from the purported sanction plan annexed to the affidavit-in-opposition of the contesting respondents before this Court, it transpires that the sanction was obtained only on February 01, 2024.
4. Since the status quo order was subsisting in the suit since April 05, 2023 till the date of the impugned order, it is contended that lawful construction could not have been made by the defendants/respondents in respect of the suit property.
5. However, the learned Trial Judge, without advertng to such aspects of the matter, dismissed the injunction application only on the premise that the authority which granted sanction for the construction had the power to grant such permission. It is further submitted that although the defendants/respondents took a plea before the learned Trial Judge that substantial construction had been done up to the lintel level, from the Commissioner's report filed in the

Trial Court, it subsequently transpired that only 18 pillars had been erected in the suit property at that juncture.

6. Thus, it is argued that the learned Trial Judge erred in law in refusing the injunction sought by the plaintiff/appellant.
7. It is further submitted that on behalf of the appellant that it is a well-settled proposition of law that a partition deed, to have any effect of conferring title on the parties thereto, is required to be registered if a transfer *in praesenti* is effected through the same. In support of such contention, learned counsel cites *Roshan Singh and others vs. Zile Singh and others*, reported at (2018) 14 SCC 814. In the present case, the defendants have taken a plea that there was a prior partition deed between the parties. However, since the same was admittedly unregistered, it is contended that such deed could not be relied on by the defendants.
8. Learned counsel appearing for the defendants/respondents hands over a copy of Order No. 7 dated August 09, 2023 whereby the learned Trial Judge, upon hearing the parties, had extended the ad interim order. It is pointed out that the learned Trial Judge had recorded the submissions of the parties in the said order and, on perusing the report of the learned Advocate Commissioner, directed the defendants/respondents to produce the permission from the authorised authority for the construction. It was further recorded that in the given premises, further injunction hearing was kept in abeyance till such permission was produced. Thus, it is submitted

that the tacit intention of the learned Trial Judge was that if such permission was produced, injunction would be granted.

9. The said order dated August 09, 2023 having not been challenged, it is submitted that the present appeal does not lie, since the impugned order is only a fallout of the observations made therein.
10. Learned counsel further submits that even going by the appellant's arguments, there was a short window available to the respondents for raising construction, between the impugned order refusing injunction and the order of interim injunction passed in appeal by this Court. Hence, since the construction has substantially been commenced and the raw materials already accumulated on the suit property would be wasted, it is submitted that the impugned order ought not to be interfered with.
11. Learned counsel cites a judgment of a Division Bench of this Court in the matter of *Sri Chandi Charan Maity vs. Sri Nakul Chandra Maity and another (FMA No. 1283 of 2024)* in support of the proposition that the validity of the sanction plan issued in favour of the defendant should be presumed unless otherwise rebutted, by applying the presumption of correctness attached to all official acts. Thus, in the present case, the learned Trial Judge rightly proceeded on the premise of validity of the sanction plan obtained by the defendants/respondents.
12. Upon considering the submissions of the parties, this Court is of the opinion that the learned Trial Judge erred in law and in fact in

dismissing the injunction application of the plaintiff/appellant for the following reasons:

13. An application under Section 144 of the Code of Criminal Procedure was filed by the plaintiff/appellant before the competent criminal court as long back as in the year 2022.
14. Even in its order dated August 09, 2023, relied on by the defendants/respondents, the trial court had observed that it was evident that the defendants had already made construction during the period from 2020 to 2023. However, the said premise was erroneous, since a photocopy of a certified copy of an order dated November 01, 2022 passed by the Executive Magistrate, Kakdwip has been placed before us which shows that the said Magistrate had directed the nature and character of the subject property not to be allowed to be changed without lawful permission of the appropriate authority. Thereafter, the suit was instituted and vide Order No. 3 dated April 05, 2023, the learned Trial Judge directed both the parties to maintain status quo in respect of the nature, character and possession of the suit property. It is an admitted position that although the sanction plan was applied for by the defendants/respondents in the year 2023, the same was obtained only on February 01, 2024. Thus, as and when the sanction plan was obtained, the status quo order granted by the learned Trial Judge was already in force and there could not be any lawful construction in terms of the sanction plan at that juncture.

15. We cannot also fail to take note of the fact that since the year 2022 till the date of filing of the suit, there was a subsisting order passed by the Executive Magistrate under Section 144(2) of the Code of Criminal Procedure restraining construction on the subject property without lawful permission of the appropriate authority. Thus, at all relevant points of time, there was a subsisting restraint order in some form or the other, either passed by the criminal court or the civil court, which precluded the defendants/respondents from raising any construction on the suit property. Thus, the very premise of the impugned order that substantial construction had already been made by the respondents, which could have created a justification to resist injunction, was erroneous.
16. No valuable rights of the defendants/respondents can be said to be hampered if an injunction order was passed against them, since there could not have been any lawful construction at any point of time prior to obtaining the sanction plan on February 01, 2024, when an interim order of status quo was already subsisting.
17. Thus, the prejudice factor operates against the defendants/respondents.
18. Even otherwise, it is well-settled that in a suit for partition, the endeavour of the Court is to maintain the property *in statu quo*.
19. Moreover, in the event one of the parties or some of the parties are permitted to make construction over a particular portion of the property according to their choice, the same would interdict the rights

of the other co-owners, which subsists on every inch of the joint property.

20. Hence, the balance of convenience and inconvenience also lay in favour of grant of injunction.
21. Even if any unlawful construction was made before obtaining the sanction plan, the Court cannot grant it blessings thereto by refusing injunction and perpetuating such wrong.
22. Hence, the very premise of the impugned order that substantial construction has already made, and that the authority which granted the sanction plan had such power, are irrelevant and not germane for the purpose of consideration of the prayer for injunction. Even otherwise, from the Commissioner's report filed in the trial court, it is evident that only 18 pillars had been constructed on the suit property, that too, apparently without any sanction plan at that juncture and at the own risk of the defendants/respondents, despite knowing of the subsisting status quo order and in the teeth of the same.
23. Such act on the part of the defendants cannot be given a premium by the Court.
24. Hence, we are of the opinion that the impugned order suffers from patent error of law and fact. In the facts of the case, the injunction as prayed for by the appellant ought to have been granted.
25. Insofar as the judgment of the coordinate Bench in *Sri Chandi Charan Maity (supra)* is concerned, the same does not have any manner of relevance to the present context, since irrespective of the validity of

the sanction plan, the civil court ought to have granted injunction to protect the status of the suit property.

26. *Roshan Singh (supra)* is also not germane at the present juncture, since the question of validity of a purported previous family arrangement/partition deed between the parties would be the subject-matter of adjudication in the suit, after a trial on evidence. It will be premature for this Court to come to any conclusive finding on the same.
27. As such, FMA 1570 of 2025 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 38 dated July 22, 2025 passed by the learned Civil Judge (Senior Division) at Kakdwip, District: South 24 Parganas in Title Suit No. 72 of 2023. Both the parties to the suit shall remain restrained by an order of injunction from changing the nature, character and/or possession in respect of the suit property in any manner till disposal of Title Suit No. 72 of 2023.
28. CAN 1 of 2025 is also disposed of accordingly.
29. We, however, make it abundantly clear that the above findings are tentative in nature, arrived at only for the purpose consideration of the prayer for temporary injunction, and will not be conclusive in any manner or binding on the trial court at any further stage of the suit. The learned Trial Judge shall be at liberty to decide all issues involved in the suit independently on their own merits without being unnecessarily influenced by the above observations.

30. Since the suit is pending since the year 2023, we express hope and trust that the learned Trial Judge shall dispose of the same as expeditiously as the business of the said court permits.
31. There will be no order as to costs.
32. 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.)