

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 Biswaroop Chowdhury

F.M.A. 1464 of 2025
IA No: CAN 1 of 2025

Abdul Alim
Vs.
Asraful Hoque and others

For the appellants	:	Mr. Partha Pratim Roy Mr. Sarbananda Sanyal Mr. Samrat Chakraborty
For the respondent no.3	:	Mr. Kingsuk Mondal Mr. Tapodip Gupta Mr. Suman Das
Heard on	:	07.05.2026
Judgment on	:	07.05.2026

Sabyasachi Bhattacharyya, J.:-

1. Affidavit-of-service filed in court today be kept on record.
2. Although service has not been effectively completed in respect of all the plaintiffs/respondents, that is, plaintiffs/respondent nos. 1 to 3, respondent no.3 is represented today through counsel.

3. However, since the suit from which the present appeal arises has been filed by respondent nos.1 to 3 jointly as plaintiffs, we deem the appearance of one of them to be effective representation for all.
4. Accordingly, the application is taken up for hearing.
5. The present challenge has been preferred against an order whereby temporary injunction has been granted by the learned Trial Judge directing both parties to maintain status quo regarding nature and character of the suit property till disposal of the suit.
6. Learned counsel for the appellant submits that from the Commissioner's report, which was a part of the trial court records, it would be evident that the defendant/appellant is constructing in his demarcated portion of the suit property, which is separated from the other portion of the property, occupied by the plaintiffs/respondents, by a boundary wall.
7. Learned counsel further submits that from the title deeds produced in the trial court, it would also be evident that the original owners of the property sold demarcated portions of the same by separate deeds in favour of the plaintiffs/respondent nos.1 to 3 and the defendant/appellant respectively.

- 8.** Thus, it is argued that as the appellant has already completed construction of the ground floor of the building up to the roof level, the injunction at this stage would violate the test of balance of convenience and inconvenience.
- 9.** Learned counsel for the plaintiffs/respondent no. 3 controverts such contentions.
- 10.** However, from the Commissioner's report, we find substance in the contention of the appellant that the appellant has already completed construction up to the roof level of the new building, that too, in a demarcated portion separated by boundary wall from the portion of the suit property where the plaintiffs are residing.
- 11.** As such, we do not find that any irreparable injury could be caused to the plaintiffs/respondent nos.1 to 3 if such construction is permitted to be completed.
- 12.** That apart, the balance of convenience and inconvenience, in the peculiar facts and circumstances of the case, is in favour of refusal of injunction rather than granting the same.
- 13.** In any event, even if the defendant/appellant is permitted to make the construction, the appellant shall comply with the riders which we intend to stipulate.

- 14.** Accordingly, FMA 1464 of 2025 is allowed, thereby setting aside the impugned order, bearing Order No.9 dated June 21, 2025 passed by the learned Civil Judge, Senior Division at Kandi, District- Murshidabad in Partition Suit No.273 of 2024, and quashing the status quo/injunction granted thereby.
- 15.** However, the above order shall be subject to the condition that the appellant shall make construction, if any, only on his demarcated portion of the suit property, and the same shall be strictly in accordance with the Building Rules and Regulations governing such constructions in the area where the suit property is located.
- 16.** Moreover, the defendant/appellant shall not claim any special equity or rights merely by virtue of such construction and such construction shall be without prejudice to the rights and contentions of the parties at all stages of the suit.
- 17.** Also, such construction shall be made entirely at the cost of the appellant.
- 18.** Furthermore, in the event the suit is decreed against the appellant and/or the portion where the construction is being made is allocated at the final hearing of the partition suit to other parties than the appellant, the appellant shall demolish

the construction made by him on the said portion at his own cost.

- 19.** CAN 1 of 2025 is disposed of in the light of the above observations.
- 20.** There will be no order as to costs.
- 21.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Biswaroop Chowdhury, J.)

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