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 1104 of 2026
IA No: CAN 1 of 2026

Pravas Mondal
Vs.
Sri Purnachandra Mondal and others

For the appellant	:	Mr. Udaynarayan Betal, Mr. Mriganka Patra
For the respondent no.1	:	Mr. Shyamal Chakraborty, Mr. Manabendra Thakur, Mr. Swarup Kumar Ghosh
Heard on	:	08.10.2026
Judgment on	:	08.10.2026

Sabyasachi Bhattacharyya, J.:-

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

2. The present appeal has been preferred against an order whereby an ad interim injunction granted in favour of the plaintiff/respondent no.1 was made absolute by disposing of the injunction application

itself as well as dismissing the application filed by the defendant no.16/appellant under Order XXXIX Rule 4 of the Code of Civil Procedure for vacating the said order.

3. Learned counsel for the appellant argues that the interim order is cryptic and does not disclose any reason.

4. It is secondly argued that the plaintiff, in the plaint as well as the written objection to the application under Order XXXIX Rule 4, admitted that there was initially a structure on the suit property which was demolished by the defendant no.1 in the suit. It is submitted that the defendant no.16 is the son of the defendant no.1 but claims title to the property by dint of an admitted gift deed executed by the defendant no.17, the grandfather of the defendant no.16 and the father of the defendant no.1, who was the original owner of the property.

5. It is contended that although the plaintiff is already living in a building situated on his portion of the suit property, the appellant is without any dwelling house and, as such, ought to be permitted to make construction in the portion of the property which is admittedly in occupation of the defendant no.1 as well as the defendant no.16/appellant and the defendant no.17, the existing structure standing on which portion was demolished.

6. Since the plaintiff has also admitted that the parties are amicably residing over their distinct portions of the suit property, although no partition by metes and bounds has been effected, it is argued that the

plaintiff shall not suffer in any manner if the appellant is permitted to make construction over his portion.

7. Learned counsel appearing for the plaintiff/respondent no.1 argues that a counter claim has been filed by the defendant nos.16 and 17 wherein the defendant no.16/appellant has claimed title by dint of a gift deed executed by the defendant no.17 as well as sought partition.

8. However, relying on the allegations made in the plaint, learned counsel submits that the plaintiff apprehends that taking advantage of an order of the court, if passed, the appellant will attempt to make a new construction over the best portion of the suit property, even during pendency of the partition suit as well as the counter claim for partition, which might create irreversible rights in favour of the appellant and deprive the plaintiff of co-equal rights as a co-sharer in respect of every inch of the suit property.

9. On a perusal of the impugned order, we find that the impugned order is cryptic, inasmuch as none of the arguments and counter arguments raised by the parties, even in their pleadings, were adverted to. The learned Trial Judge, in a summary manner, disposed of the injunction application as well as the vacating application on the premise that the application for vacating cannot be allowed at this stage where “there are other alternative non-suit plots in the adjoining plots belonging to the parties”, which is an extraneous consideration, not being germane for the adjudication of the injunction application or the vacating application.

10. Upon hearing learned counsel for the parties, it transpires that since it is an admitted position that the appellant is claiming right as a co-sharer in respect of the suit property by dint of a gift deed executed by the defendant no.17, the original owner, and as it is also an admitted position that the defendant no.1, the father of the defendant no.16/appellant, had demolished the portion where the defendant nos.1 and 17 were residing, with the permission of the defendant no.17, his father, we are of the *prima facie* opinion that since the plaintiff is already enjoying occupation by residence in a portion of the suit property and it is an admitted position that the parties are amicably residing in separate portions of the property, it would only be equitable and appropriate if the appellant is permitted to make construction on the portion of the suit property where the building which has been demolished, under occupation of the defendant nos.1 and 17, stood.

11. However, in order to ascertain the exact extent of the said portion, a local inspection is required to be held.

12. In the light of the above observations, FMA 1104 of 2026 is allowed on contest against the plaintiff/respondent no.1, thereby setting aside the impugned order, bearing Order No.13 dated May 11, 2026 passed by the learned Civil Judge (Senior Division) at Ghatal, District: Paschim Medinipur in Title Suit No.142 of 2025, and directing the learned Trial Judge to re-adjudicate on merits the application under Order XXXIX Rule 4 of the Code of Civil Procedure filed by the appellant as well as the temporary injunction application filed by the

plaintiff/respondent no.1, upon giving fresh hearing to both the parties.

13. While doing so, the learned Trial Judge shall appoint an Advocate Commissioner for the purpose of holding local inspection in presence of both the plaintiff/respondent no.1 as well as the appellant and/or their authorized agents, during which the appellant and/or his authorized agent shall identify in presence of the plaintiff/respondent no.1 and/or his authorised agent, as to exactly which portion of the suit property the appellant seeks to make the construction on.

14. Thereafter, upon perusing the report filed by the Commissioner subject to such inspection, the learned Trial Judge shall come to the conclusion as to whether such portion pertains to the area of the suit property where a previous building stood where the defendant nos.1 and 17 were residing. The learned Trial Judge shall, thereafter, be at liberty to modify the ad interim order initially granted to the extent as necessary in order to permit the appellant to make construction, strictly in the portion where the previous construction (where the defendant nos. 1 and 17 used to reside) stood, which was demolished by the defendant no.1, strictly in accordance with law and the sanction plan duly obtained by the appellant for such purpose.

15. It is made clear that the merits of the case have not been gone into by this Court conclusively and it will be open to the learned Trial Judge to decide both the applications on their own merits in the light, however, of the observations made above.

16. CAN 1 of 2026 is accordingly disposed of as well.

17. There will be no order as to costs.

18. 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.)

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