

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

FMAT 425 of 2025  
IA No: CAN 2 of 2025

Matiuddin Khan  
Vs.  
Sareq Khan and another

With

FMA 1350 of 2025  
IA No: CAN 2 of 2025

Matiuddin Khan  
Vs.  
Asfaque Khan and another

With

FMAT 426 of 2025  
IA No: CAN 2 of 2025

Matiuddin Khan  
Vs.  
Asfaque Khan and another

With

FMAT 427 of 2025  
IA No: CAN 2 of 2025

Matiuddin Khan  
Vs.  
Shareq Khan and another

With

FMAT 428 of 2025  
IA No: CAN 2 of 2025

Matiuddin Khan  
Vs.  
Sareq Khan and another

For the appellant : Mr. D.K. Adhikari,  
Mr. Sourav Mitra,  
Ms. Sreyasree Choudhury,  
Mr. Debdip Adhikari

For the respondent no.1 : Ms. Manali Ali,  
Mr. Soumalya Ganguli

Heard on : 17.03.2026

Judgment on : 17.03.2026

**Sabyasachi Bhattacharyya, J.:-**

1. The affidavits-in-reply filed today in some of the matters be kept on record.
2. On consent of both parties, the appeals are taken up for hearing along with the interlocutory applications.
3. All the appeals arise between substantially the same parties, the geneses thereof being suits for preemption of transfer deeds in respect of different portions of the same property, instituted by the plaintiff/appellant in all the appeals under the Mohammedan Law.

4. The plaintiff/appellant claims to be an adjacent owner of the subject plots, which were transferred by the deeds sought to be preempted. In such suits, upon applications for temporary and ad interim injunction being filed by the plaintiff, the learned Trial Judge refused to grant ad interim injunction, despite observing that a *prima facie* case had been made out, on the premise that the defendants ought to be heard before passing any order to that effect.
5. Learned counsel for the appellant cites a judgment of a learned Single Judge of the Madhya Pradesh High Court in the matter of *Neeraj Darbari vs. Manoj Rameshwar Shukla*, reported at 2001 (2) M.P.L.J. 213, for the proposition that in order to obtain an order of injunction, the plaintiff need not make out a clear legal title but has to satisfy the Court that he has a fair question to raise as to the legal right claimed by him in the suit. It is not the function of the Court, it was held, at that stage, to resolve disputed questions of fact or difficult questions of law, which should be left to be decided at the conclusion of the trial.
6. Learned counsel for the appellant, for abundant caution, also addresses the Court on the issue of limitation (although the same was not dealt with by the learned Trial Judge) and submits that although the suits were filed more than one year after the registration of the sale deeds, the filing took place within one year from the date of knowledge of such sale on the part of the plaintiff/appellant.
7. Learned counsel appearing for the principal defendant/respondent no.1 controverts the contentions of the appellant and submits that

the suits are barred under Article 97 of the Schedule to the Limitation Act, 1963 inasmuch as documents pertaining to the recording of the names of the said respondent/purchaser in the record of rights, which show that possession of the subject properties have already been taken by the principal defendant/respondent (purchaser) have been disclosed in the affidavits-in-opposition filed before this Court.

8. By pointing out to the date of commencement of the limitation in preemption suits as contemplated under Article 97, it is reiterated that the suits were filed more than one year after the date of possession and, as such, are palpably time-barred.
9. Even otherwise, learned counsel for the principal defendant/respondent no.1 disputes that the appellant is an adjacent owner of the subject properties.
10. Learned counsel for the respondent no.1 further points out that the premise of the pleadings in the plaints regarding limitation was as if the date of commencement of limitation is the date of knowledge of the plaintiff of the sale, which is an erroneous premise under Article 97 of the Limitation Act.
11. Upon hearing learned counsel for the parties, we find that the ratio laid down in the decision cited by the appellant is quite well-settled. It is trite law that at the stage of grant of temporary/ad interim injunction, the Court is merely to see whether a *prima facie* case and/or triable issue has been made out and it is not for the plaintiff at that inchoate stage to prove his title to the hilt.

12. Hence, we proceed to adjudicate the present appeals by applying the said test.
13. It catches the eye at the first blush that the findings of the learned Trial Judge in the impugned orders in each of the matters are contradictory to the conclusions arrived at, to the extent that the learned Trial Judge, despite finding that a *prima facie* case has been made out by the plaintiff/appellant, refused to grant ad interim injunction on the flimsy pretext of the requirement to hear the defendant.
14. Next coming to the question of limitation, Article 97 of the Schedule to the Limitation Act, 1963 clearly stipulates that the starting point of limitation for a preemption suit is the date when the purchaser takes, under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered.
15. In the present cases, it is nobody's contention that the subject properties of the sales, which are immoveable properties, are incapable of physical possession being taken. Thus, it is the first limb of Article 97 which is applicable to the present cases.
16. However, it is an equally well-settled proposition of law that at the stage of consideration of an ad interim prayer for injunction, it is the averments and materials produced before the Court by way of the plaint and the injunction application which are to be taken *prima facie* as sacrosanct, in the absence of anything else at that stage to

rebut the same. At that stage, the Court only has to see whether, on the basis of the case made out in the plaint and the injunction application, sufficient cause of action to obtain the reliefs sought has been disclosed and averments and materials have been respectively pleaded and produced to raise a *prima facie* triable issue to go for trial.

17. Seen thus, from the pleadings of the plaint as well as the temporary injunction application of the plaintiff/appellant in the trial court, we do not find any clear averment as to when, if at all, possession has been taken in respect of the subject properties by the principal defendant/respondent no.1/purchaser. The plaintiff has alleged in the plaints of all the suits that attempts to take possession and to make construction are being made by the principal defendant/respondent no.1 without, however, specifically admitting that the respondent no.1 has actually taken possession.
18. In the event the allegation of the respondent no.1 of having taken possession of the properties is to be looked into, further materials produced by the respondent no.1 for the first time in these appeals, which were not before the trial court at the stage of consideration of the prayer for ad interim injunction, have to be looked into, which come within the category of disputed questions of fact and cannot be gone into at this stage.
19. Needless to say, the considerations at this stage are limited to the test applicable to the ad interim stage and it will be open to the defendant/respondent no.1 not only to argue on all issues but also to

produce further materials in support of his contention that the suits are barred by limitation due to possession having been taken beyond the limitation period prior to the filing of the suits.

20. However, since, in the facts of the case, limitation is a mixed question of fact and law and cannot be adjudicated at the first glance of the plaints and the injunction applications filed in the various suits, the Court cannot proceed on the basis of such allegations of the principal defendant at this stage.
21. In view of the above, we are of the opinion that since the learned Trial Judge already found that a *prima facie* case has been made out, which is also borne out by the averments made in the plaints and the injunction applications, ad interim injunction as sought by the plaintiff/appellant ought to have been granted.
22. Accordingly, we dispose of the appeals in the following manner:
  - (i) FMAT 425 of 2025 is allowed on contest, thereby setting aside the impugned order dated January 21, 2025 passed by the learned Civil Judge (Senior Division), Second Court, Sadar, District: Paschim Medinipur in Title Suit No. 56 of 2025 and granting ad interim injunction restraining the defendants/respondents from changing the nature and character of the property, which is the subject-matter of the deeds sought to be preempted.
  - (ii) FMA 1350 of 2025 is allowed on contest, thereby setting aside the impugned order dated January 21, 2025 passed by the learned Civil Judge (Senior Division), First Court, Sadar,

District: Paschim Medinipur in Title Suit No. 55 of 2025 and granting ad interim injunction restraining the defendants/respondents from changing the nature and character of the property, which is the subject-matter of the deeds sought to be preempted.

- (iii) FMAT 426 of 2025 is allowed on contest, thereby setting aside the impugned order dated January 21, 2025 passed by the learned Civil Judge (Senior Division), Second Court, Sadar, District: Paschim Medinipur in Title Suit No. 53 of 2025 and granting ad interim injunction restraining the defendants/respondents from changing the nature and character of the property, which is the subject-matter of the deeds sought to be preempted.
- (iv) FMAT 427 of 2025 is allowed on contest, thereby setting aside the impugned order dated January 22, 2025 passed by the learned Civil Judge (Senior Division), Second Court, Sadar, District: Paschim Medinipur in Title Suit No. 54 of 2025 and granting ad interim injunction restraining the defendants/respondents from changing the nature and character of the property, which is the subject-matter of the deeds sought to be preempted.
- (v) FMAT 428 of 2025 is allowed on contest, thereby setting aside the impugned order dated January 22, 2025 passed by the learned Civil Judge (Senior Division), Second Court, Sadar, District: Paschim Medinipur in Title Suit No. 57 of

2025 and granting ad interim injunction restraining the defendants/respondents from changing the nature and character of the property, which is the subject-matter of the deeds sought to be preempted.

23. The applications, all bearing CAN 2 of 2025, filed in connection with the present appeals, are also disposed of accordingly.
24. We make it abundantly clear that this Court has not conclusively decided any of the issues involved in the temporary injunction applications or the suits and it will be open to both the parties to argue all points subsequently before the Trial Court. The learned Trial Judge, while deciding the temporary injunction applications as well as the suits, shall not be unnecessarily swayed in any manner by any of the observations made above but shall independently decide the said applications and suits on their own merits, upon giving adequate opportunity of hearing and production of materials to both the parties.
25. The principal defendant/respondent no.1 shall file their written objections to the temporary injunction applications pending in the trial court in each of the suits within a week from date.
26. We request the learned Trial Judge to dispose of all the injunction applications in the aforesaid suits as expeditiously thereafter as possible, positively within three weeks from the date of filing of the written objections by the principal defendant/respondent no.1.
27. There will be no order as to costs.

28. 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.

(Supratim Bhattacharya, J.)

AD-42-46  
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