

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Biswaroop Chowdhury

FMA No. 1715 of 2025

Hisabuddin Sk.
Vs.
Murshed Ali Seikh alias Mursid Seikh
and others

For the appellant : Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Ms. Poulami Chakraborty, Advs.

For the respondent nos. 1 and 2. : Mr. Manas Kumar Das,
Mr. Prabal Das, Advs.

For the respondent nos. 3 to 30. : Mr. Sudip Das,
Mr. Asraf Mondal, Advs.

Heard on : May 19, 2026.

Judgment on : May 19, 2026.

Sabyasachi Bhattacharyya, J.:

1. The present challenge has been preferred against the grant of ad interim injunction in a partition suit instituted by the plaintiffs/respondents.

2. Learned counsel appearing for defendant no. 1/appellant argues that the vendors of the parties had sold demarcated portions of the original plot.
3. At least insofar as the present defendant no. 1/appellant is concerned, it is submitted that by a transfer deed, a specific portion of the property was transferred to the appellant.
4. In terms of the said allocation, the appellant, it is submitted, has been making construction on the suit property in accordance with a valid sanction plan.
5. Despite having constructed up to the ground floor level, the plaintiffs/respondents, at such belated stage, obtained the impugned order of injunction to the detriment of the appellant.
6. It is submitted that the appellant may be permitted to raise construction in terms of the sanction plan with the undertaking that the construction so made shall be demolished in the event a decree is passed in favour of the appellant or if the concerned portion of the suit property, over which such construction is being raised, is allocated to any other party.
7. In view of arguable questions having been raised, we admit the appeal, to be heard on the grounds taken in the memorandum of

appeal, and take up the appeal itself for hearing by dispensing with all formalities, since the questions involved are short.

8. Learned counsel appearing for the plaintiffs/respondents controverts the submissions of learned counsel for the appellant and submits that it would be evident from the copy of the sanction plan, which is annexed to the compilation submitted in Court by the appellant, that the sanction has spent its force on March 31, 2026. As such, at present, there is no valid sanction plan.

9. Secondly, it is argued that the appellant is seeking to raise construction over the better portion of the joint property, over every inch of which all the co-sharers have title.

10. It is pointed out that the learned trial Judge took into consideration the fact that even in the transfer deed of the appellant, the boundaries of the plots were mentioned only as agricultural lands without any specific mention of the plot numbers or the names of the owners of the adjoining lands and as such, the case of the defendant no. 1/appellant that a specific demarcated portion was sold to the defendant/appellant was disbelieved *prima facie* by the learned trial Judge.

11. Upon perusal of the impugned order, we find it to be well-reasoned.

12. The learned trial Judge took into consideration the respective arguments of the parties and also took note of the fact that *prima facie* it appears that the boundaries of the plots as mentioned in the title deed of the appellant were mentioned only as agricultural lands, without any specific plot numbers or names of the adjoining owners, thereby creating a cloud as to whether a specific demarcated portion was actually sold to the appellant.

13. That apart, since the respondents argue that the appellant is making construction over the better portion of the suit property, unless such issue is resolved by trial, it would not be prudent to permit further construction to be made by the appellant at this stage.

14. Certain photographs are handed over in Court, although those were apparently not a part of the trial court records.

15. However, even if we look into those, it appears that the construction made till date is still at an early stage and even the ground floor has not been completed.

16. In any event, it is well-settled that even if an alternative view is possible on the materials available, the appellate court does not readily interfere with the order impugned, by substituting its own view for that of the learned trial Judge, unless there is any error of law and/or fact manifest in the trial court's order.

17. We do not find any such error of law or fact in the impugned order to justify substitution of our alternative view, even if possible, for that of the trial court and permitting the appellant to make further construction.

18. As such, we do not find any illegality or error in the impugned order.

19. Hence, FMA No. 1715 of 2025 is dismissed on contest.

20. Consequentially, CAN 1 of 2025 is also dismissed.

21. It is made clear that the findings rendered above and in the impugned order are only tentative in nature, arrived at for the limited purpose of disposal of the injunction application and the appeal, and shall not be treated to be binding at any further stage of the suit and the pending temporary injunction application.

22. This Court expects that the learned trial Judge shall endeavour to expedite the hearing of the injunction application, if still pending, preferably to be disposed of within a month from the date of communication of this order to the trial court, and thereafter to dispose of the suit as early as possible, preferably within one year from the date of disposal of the injunction application. The parties shall cooperate with the trial court in such early disposal by desisting

from seeking unnecessary adjournments and by filing their respective pleadings, if any, at the earliest.

23. There will be no order as to costs.

24. Urgent photostat certified copies of this judgment and order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)