

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya

And

The Hon'ble Mr. Justice Supratim Bhattacharya

FMAT 449 of 2024

with

CAN 1 of 2025

Sabbir Alam

Vs.

Ababs and Ors.

For the appellant : Mr. Partha Pratim Roy,
Mr. Sayantan Hazra, Advs.

For the respondent no.1 to 5 : Md. Nauroz Rahber,
Mr. Mohammad Jawwad,
Ms. Shahin Parveen, Advs.

Heard on : 07.04.2026

Judgment on : 07.04.2026

Sabyasachi Bhattacharyya, J.:-

1. In view of the questions involved in the appeal being brief, we admit the appeal take it up for hearing along with the application by dispensing with technical formalities, to save the parties unnecessary wastage of resources due to pendency of litigation before this Court.
2. The instant appeal has been preferred against an order whereby the application filed by the defendants/respondent nos. 1 to 5 under Order XXXIX Rule 4 of the Code of Civil Procedure was allowed, thereby vacating the ad interim order of injunction initially granted in favour of the plaintiff/appellant on March 20, 2024, primarily on the ground of suppression of material facts.
3. By the selfsame order, the learned Trial Judge also disposed of the main temporary injunction application, filed under Order XXXIX Rules 1 and 2 of the Code, as well.
4. Learned counsel for the appellant argues that the learned Trial Judge erroneously proceeded on the premise that material facts were suppressed at the time of obtaining the initial ex parte ad interim injunction order. By placing reliance on paragraph nos. 11, 15 and 16 of the plaint, it is argued that the plaintiff categorically disclosed the recording of the names of some of the defendants in the Records

of Rights but disputed their title and the basis of inclusion of their names in the Records of Rights. Even in the prayer portion of the plaint, the title of some of those defendants has been disputed. However, for abundant caution, subject to adjudication in the suit, their names were included in the array of parties in the partition suit. That apart, learned counsel relies on the recording in Order no. 1 dated March 20, 2024 to the effect that the plaintiff filed copies of the plaint, power as well as “xerox copies” of documents as per *firisty*, which indicates, according to the appellant, that none of the documents relied on in the plaint were suppressed, including the relevant extracts of the Records of Rights.

5. Learned counsel appearing for the contesting defendants/respondent nos. 1 to 5 points out that the plaintiff virtually admitted the case run by the contesting respondents in their application under Order XXXIX Rule 4 of the Code by making several applications after passing of the impugned order. For example, an application has been made for impleading certain other persons whose names are also recorded in the Records of Rights, who were not originally impleaded in the suit. Moreover, an application has been filed by learned counsel for the plaintiff appearing in the Trial Court to the effect that he had filed the plaint as per instruction of his client and was not responsible for the statements made therein. Moreover, an application has also been filed seeking rectification of a deed number erroneously mentioned in the plaint.

6. That apart, it is argued that there are several parties on whom title devolved in respect of the subject plots who were neither impleaded in the suit nor were even mentioned in the plaint or temporary injunction application, thereby leading to the conclusion of the learned Trial Judge that there was suppression of material facts.
7. Upon hearing learned counsel for the parties, we find that the primary ground on which Order XXXIX Rule 4 was invoked was suppression of material facts, since the initial order was passed at the ad-interim stage *ex parte*, in the absence of the defendants.
8. Entering into the merits of the alleged suppression, we find that the learned Trial Judge observed that the deed of 1959 and other documents were not placed before the Court, neither were those served on the “defendant first party”, who could have perused the same during submissions.
9. The learned Trial Judge further held that the RS Records were filed later by the plaintiff and by the plaintiff’s own document, his contentions of paragraph 11 of the injunction application is contradicted, which tantamounts to approbating and reprobating in the same breath.
10. The learned Trial Judge further observed that the averments and contentions of the injunction application which state that defendant first party and defendant second party had no right, title and interest were intentionally thought out, typed and produced in court, serving copy on the other side, in spite of having the documents as per

firisty dated March 20, 2024 which was not submitted to court. It was held to tantamount to filing of a false affidavit.

11. However, we find from the impugned order itself that the learned Trial Judge simultaneously observed that from the plaintiff's own document it is revealed that Munseuddin's share, as stated to be 16 annas, by which he transferred his total share, is required to be proved by "trial and evidence" in court. Since, in the opinion of the Trial Judge himself, the matter requires to be proved by trial and evidence, it cannot be a ground for vacating an interim order under Order XXXIX Rule 4 of the Code. To come to a finding that there was suppression of material facts, if detailed appreciation of evidence and further materials is necessary, the same transgresses into the domain of adjudication of the suit or at least the temporary injunction application itself on merits upon taking on record the versions of both parties. However, a qualitative finding on merits as to the importance/relevance of the material alleged to be suppressed cannot be arrived at at the stage of deciding an application under Order XXXIX Rule 4 in the event detailed evidence is required to be appreciated for coming to such finding.
12. The suppression of material facts and/or misleading statements contemplated in Order XXXIX Rule 4 has to be palpable and *ex facie*.
13. We find from the averments made in paragraph no. 11 of the plaint as well as the injunction application that the right, title, interest and possession of the defendant first and second parties have been

categorically disputed. However, in paragraph no. 15 of the plaint and the injunction application, it is clearly disclosed as to whose names are recorded in the Records of Rights but it has been pleaded that most illegally, without any authenticity, the RS Record was changed and one Asiran was shown as the owner of 50% of the suit land and that the inclusion was made after the field survey and the said endorsement of the name of Asiran was written in red colour. It was also pleaded that such scanned copy of RS ROR does not show any date or case number or even any initial or signature of the Revenue Officer who corrected the endorsement; therefore there is a serious doubt about the authenticity of inclusion of the name of said Asiran.

- 14.** In paragraph no. 16, presuming the devolution of title in respect of the suit land on the basis of the Records of Rights, a genealogical table has also been given, simultaneously disputing the title of some of the defendants.
- 15.** Consistency is maintained with such stand in the body of the plaint and the injunction application in the reliefs sought in the suit, in particular prayer (g) thereof, where a declaration has been sought to the effect that the defendant first and second parties derive no title or any right to possess the suit plot and the RS and LR ROR are erroneous, wrong and not binding upon the plaintiff and such recording does not extinguish the title of the plaintiff over the suit land.

16. In conjunction with such averments, in Order No. 1 dated March 20, 2024, the learned Trial Judge categorically recorded that the plaintiff filed copies not only of the plaint and the power but also “xerox copies” of the documents as per *firstly*.
17. Hence, as per the recording in the said order, in the view of the learned Trial Judge as well, photocopies of the documents referred to and relied on in the plaint and the injunction application were filed at the time of filing of the plaint itself and were before the trial court at the juncture when the *ex parte* ad-interim injunction was granted.
18. Learned counsel for the contesting respondents relies on paragraph 11 of the Order XXXIX Rule 4 application in particular by pointing out that the names of some parties disclosed therein were also depicted in the Records of Rights but they were not impleaded as parties. Such stand is sought to be bolstered by arguing that the plaintiff subsequently filed applications for impleadment of such parties, thereby corroborating the case of the contesting respondents.
19. However, on a perusal of the said application, a copy which was handed over to court momentarily for the purpose of perusal, it transpires that the plinth of the said application is that since the defendants have mentioned the names of certain additional parties, they are being impleaded for abundant caution.
20. Insofar as the application for correction of a deed number is concerned, the date of the deed was correctly mentioned in the plaint

and the injunction application but only the number thereof was erroneously stated. Thus, we do not find any suppression of material fact worth vacating an order, coming within the purview of Order XXXIX Rule 4 of the Code of Civil Procedure.

- 21.** The application by learned counsel for the plaintiff in the trial court to the effect that he acted on instruction of his client does not take away anything from, or deny, the averments made in the plaint and the injunction application. Such application was obviously made under threat of being hauled up for making false affidavit in court, which was insinuated in the impugned order itself.
- 22.** However, we insert a caveat here to the extent that all the issues raised by the contesting defendants/respondents will be open to be taken by them and the other defendants at the time of final hearing of the temporary injunction application.
- 23.** The respective scopes of Order XXXIX Rule 4 with regard to an *ex parte* ad-interim injunction and a final adjudication of a temporary injunction application under Order XXXIX Rules 1 and 2 are different. The former is restricted to the parameters laid down in Order XXXIX Rule 4 whereas all questions are open to be canvassed by the parties at the final hearing of the temporary injunction application, since the pleadings and documents of both parties are before the Court at that juncture.
- 24.** On the anvil of the yardsticks of Order XXXIX Rule 4 in respect of an *ex parte* ad-interim injunction, however, we do not find such tests

to be satisfied in the present case, sufficient to vacate the initial *ex parte* ad-interim order granted in favour of the plaintiff/appellant.

25. Another aspect of the matter cannot be overlooked. The learned Trial Judge, even prior to filing of the written objection by the contesting defendants, disposed of the temporary injunction application itself by the impugned order without giving both parties opportunity to address the same on merits, consequentially upon allowing the application under Order XXXIX Rule 4 of the Code. Such approach is completely erroneous and contrary to law, since the adjudication of an application under Order XXXIX Rule 4 pertains only to the *ex parte* ad interim order granted initially and not to the final adjudication of the injunction application, which is to be heard and decided independently upon hearing both parties and giving opportunity to them to bring their pleadings and materials on record.
26. Thus, the impugned order is bad on such count as well.
27. Accordingly, FMAT 449 of 2024 is allowed on contest, thereby setting aside the impugned order bearing Order no. 5 dated May 15, 2024 and re-imposing the ad-interim order of injunction granted on March 20, 2024 by the learned Civil Judge (Senior Division), Islampur, District – Uttar Dinajpur in Partition Suit no. 134 of 2024 till disposal of the temporary injunction application by the trial court.

- 28.** The contesting respondents shall file their written objection to the temporary injunction application in the Trial Court if not already filed. On the prayer of learned counsel for the contesting respondents, the time for filing such written objection is granted for a period of six weeks from date.
- 29.** It is expected that the learned Trial Judge shall dispose of the temporary injunction application as expeditiously thereafter as the business of the said Court permits.
- 30.** We reiterate that this Court has not entered into the merits of the temporary injunction application and it will be open to the learned Trial Judge to decide the same independently and in accordance with law, without being influenced in any manner by the observations made above.
- 31.** CAN 1 of 2025 is consequentially disposed of as well.
- 32.** There will be no order as to costs.
- 33.** Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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(SSS)