

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/39/2026
IA No.GA/1/2026

ASHOK KUMAR SARAF AND ANR.

-VERSUS-

GAUTAM SARAF AND ORS.

APOT/40/2026
IA No.GA/1/2026

ASHOK KUMAR SARAF AND ANR.

-VERSUS-

GAUTAM SARAF AND ORS.

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

Date: 31st March, 2026.

Appearance:

Mr. Rajarshi Dutta Adv.
Mr. Piyush Agarwal, Adv.
Ms. Shivangi Thard, Adv.
Mr. Debjyoti Das, Adv.
...for the appellant.

Mr. Anirban Ray, Sr. Adv.
Ms. Urmila Chakraborty, Adv.
Mr. Orijit Chatterjee, Adv.
Ms. Sabarni Mukherjee, Adv.
Ms. Aishi Chatterjee, Adv.
...for the respondent.

The Court :- Two appeals are taken up for analogous hearing as they emanate out of two orders passed in a suit in the same injunction petition.

The first appeal is directed against the order dated February 6, 2026 by which the learned Single Judge granted an order of injunction in respect of properties involved in a suit for partition.

The second appeal is directed against the order dated February 20, 2026 which continued with the initial ex parte ad interim order dated February 6, 2026 and permitted the parties to file affidavit.

Learned Advocate appearing for the appellant submits that the appellant is concerned with only one immovable property which is described in Annexure-R to the plaint and is at serial no.10 thereof. He submits that, such property is a leasehold right which the appellant obtained from the State of West Bengal in 1985. He refers to the pleadings in the plaint. He submits that, on the basis of such pleadings, the property cannot be treated as a joint property capable of being partitioned in a suit for partition.

Learned Advocate appearing for the appellant relies upon Section 4 of the Prohibition of Benami Properties Transaction Act, 1988 and submits that the suit is barred under such provision.

Relying upon Section 14 of the Hindu Succession Act, 1956, learned Advocate appearing for the appellant submits that, the immovable property concerned should be treated as the property belonging to the appellant herself to the exclusion of all others.

Plaintiff is represented.

Suit is one for partition of immovable property concerned.

Appeal is limited to one of the properties involved in the suit for partition.

Appeal relates to an immovable property lying and situate at Salt Lake City, Kolkata. A lease was obtained by the appellant from the State of West Bengal in respect of such immovable property in 1985.

Parties to the suit are related to each other and are of the same family. There are numerous businesses and immovable properties belonging to such family.

Independent income of the appellant is not established conclusively at this stage for us to return a finding that the lease of the Salt Lake property was obtained by the appellant through her own income. What is canvassed as the source of income is the appellant being a partner of a partnership business belonging to the family. Here crucially, the partnership business is claimed to be belonging to the family itself.

In absence of the Court being capable of returning conclusive finding with regard to the source of income of the appellant, it would be improper to hold that, the immovable involved cannot form part of the suit for partition.

Issues raised by the appellant are kept open to be raised at the trial if the appellant is advised to raise the same at that point of time.

We find that the learned Trial Judge exercised discretion in granting the interim orders as noted above. No interference is called for.

APOT/39/2026 and APOT/40/2026 along with connected applications are disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)