

Partition Suit No. 623 of 2025

Order No. 21 Dated 07.08.2026

Today is fixed for passing order in respect of the plaintiff's application for temporary injunction.

At the time of hearing, I have thoroughly heard the learned Advocates appearing for the parties at length. Perused the plaint, the petition for temporary injunction, the written objections filed by the defendants, the documents annexed by the respective parties, the report of the Learned Local Inspection Commissioner along with the photographs and the decisions cited at the Bar.

Now the record is taken up for passing necessary order.

The plaintiff has instituted the present suit alleging, inter alia, that the suit property is still joint and unpartitioned amongst its co-sharers and that the plaintiff has an admitted undivided share measuring 3.333 decimals therein. According to the plaintiff, despite the joint character of the property, defendant Nos. 1 to 4 have been attempting to raise permanent pucca construction over different portions of the suit property with an intention to occupy the most valuable frontage thereof, thereby prejudicing the plaintiff's right to obtain a proportionate and equitable allotment in the event of partition. On such allegation, the plaintiff has prayed for an order of temporary injunction restraining the defendants from making any further construction over the suit property during pendency of the suit.

The application has been substantially contested by defendant No. 4. The remaining defendants have only formally opposed the prayer.

The principal contention of defendant No. 4 is that the construction is being made within the area under his specified possession and after obtaining sanction of the building plan from the concerned Gram Panchayat. It is further contended that the plaintiff has instituted the suit out of personal rivalry merely to obstruct the lawful construction. It has also been argued that defendant No. 4 has already invested a considerable amount towards purchase of construction materials and that the construction has progressed substantially. Therefore, according to him, if the injunction is granted, he would suffer greater hardship compared to the plaintiff in the event the injunction is refused and consequently the balance of convenience lies in his favour.

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In support of such contention, learned Advocate Hasnain Reja representing the defendant No. 4 has relied upon the decisions of Hon'ble Calcutta High Court , reported in **2016 (5) CHN (Cal) 470 (Daspur-I Agriculture Marketing Co-operative Society Ltd. vs. Tapan Bhattachariya @ Adhikari)** and **2017 (3) CHN (Cal) 338 (Pintu Mallick vs. Jayanta Mallick)**.

The rival submissions have been carefully considered.

At the outset, it is not in dispute that the suit property has not yet been partitioned by metes and bounds. It is equally undisputed that the plaintiff possesses an undivided co-sharership in the suit property to the extent of 3.333 decimals. Thus, the plaintiff's status as a co-owner of the joint property stands prima facie established.

It is a settled principle of law that every co-sharer has an interest in each and every inch of the undivided property until partition by metes and bounds. Although one co-sharer may be in separate possession of a particular portion by mutual arrangement or convenience, such possession does not confer an exclusive proprietary right over that portion so as to permit alteration of the nature and character of the joint property to the prejudice of other co-sharers. Permanent construction over an unpartitioned joint property, particularly over the more advantageous portion thereof, may seriously prejudice the rights of the remaining co-sharers at the time of final partition and may render the ultimate decree difficult to execute in its true spirit.

The contention of defendant No. 4 that his predecessor-in-interest had purchased/obtained the property with specified boundaries written in their Title Deeds and that, therefore, the property has practically ceased to retain its ejmal character does not appear to be legally sustainable at this interlocutory stage. Merely because different conveyances describe the purchased portions by specific boundaries, the joint character of the property does not automatically come to an end. In terms of Section 14 of the West Bengal Land Reforms Act, partition of immovable property can be effected only by a decree of a competent Civil Court or by a registered instrument of partition. No such decree or registered partition deed has been brought to the notice of this Court. Consequently, the property continues to retain its undivided character notwithstanding the alleged separate possession of the parties.

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The plea that the construction has been sanctioned by the local Gram Panchayat is equally of little assistance to defendant No. 4. Grant of a building plan sanction merely authorizes construction from the standpoint of municipal or local authority regulations. It neither determines nor enlarges the civil rights of the parties over the disputed property nor can it override the rights of other co-sharers in an unpartitioned property.

Coming to the authorities cited by the learned Advocate for defendant No. 4, this Court has carefully gone through the decisions reported in **2016 (5) CHN (Cal) 470** and **2017 (3) CHN (Cal) 338**. It appears that in both the said cases the construction had already advanced to a substantial stage and the Hon'ble High Court, taking note of the advanced stage of construction and the comparative hardship likely to be suffered by the defendant, declined to interfere by granting/affirming injunction while observing that the construction made by the defendant would remain subject to the result of the suit.

The factual matrix of the present case, however, is materially different. The report of the Learned Local Inspection Commissioner as well as the still photographs relied upon by defendant No. 4 himself, reveal that the construction in question is still at very nascent stage. Therefore, the ratio of the aforesaid decisions cannot be mechanically applied to the present facts. Since the construction has not progressed substantially, no irreparable prejudice would be caused to defendant No. 4 if he is temporarily restrained from proceeding further until the rights of the parties are adjudicated. On the contrary, if the construction is permitted to continue, it may create irreversible complications in the matter of partition and may substantially prejudice the legitimate entitlement of the plaintiff to obtain an equitable allotment of his undivided share, particularly with regard to the valuable frontage of the suit property.

Another circumstance which deserves notice is that defendant No. 4 had earlier approached the Hon'ble Calcutta High Court by filing Civil Revisional Application No. 22116 of 2025 seeking directions upon the respondents, including the present plaintiff and the police authorities, not to obstruct the construction. It appears from the materials available on record that the Hon'ble High Court has pleased to disposed of the said proceeding

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without granting the relief prayed for. Though such disposal may not operate as res judicata upon the issues involved herein, the fact remains that defendant No. 4 could not obtain any affirmative order enabling him to proceed with the construction notwithstanding the subsisting dispute.

Upon an overall consideration of the pleadings, documents and materials available at this interlocutory stage, this Court is satisfied that the plaintiff has succeeded in establishing a strong **prima facie** case. The balance of convenience and inconvenience also found to be tilted in favour of preserving the existing condition of the suit property until the dispute is finally adjudicated. Refusal of injunction may result in permanent alteration of the nature and character of the joint property and may render the eventual partition inequitable and the decree difficult to implement. Such injury cannot be adequately compensated in terms of money and therefore constitutes irreparable injury.

Accordingly, the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure deserves to be allowed.

Hence, it is ordered

That the Plaintiff's temporary injunction petition dated 02.09.2025 is allowed on contest.

Consequently the defendant Nos. 1 to 4, their men, agents, servants, representatives or anybody claiming through or under them are hereby restrained by an order of temporary injunction from making any further construction, changing the nature and character of, or creating any third-party interest in respect of the suit property until disposal of the suit or until further orders of this Court.

It is, however, made clear that the observations made herein are purely tentative in nature for the purpose of deciding the present application and shall not influence the trial of the suit on merits.

Ad-interim order (if any) of plaintiff's temporary injunction petition, stands vacated with the passing of this order.

Fixed **31.08.2026** for framing of issues.

D/C by me

C.J.S.D, Lalbagh

**Civil Judge (Senior Division)
Lalbagh, Murshidabad, W.B
J.O. Code: WB01100**