

9<sup>th</sup> September,  
2026  
(AK)  
09

**F.M.A.T 228 of 2026**  
**IA No: CAN 1 of 2026**

Khelafat Ali Sha  
Vs.  
Jahedul Ali Sha and others

Mr. Tapan Kumar Mahapatra  
....For the appellant.

Mr. Mahamudul Hassan  
...for the respondent nos. 1 to 7.

1. Affidavit-of-service filed in court today be kept on record.
2. Heard learned counsel for the parties.
3. Learned counsel appearing for the respondent nos.1 to 7 submits that no affidavit-in-opposition shall be filed since, even on the papers annexed to the present injunction application, no case of grant of injunction has been made out.
4. Learned counsel for the respondent nos.1 to 7 points out that from the annexure at page-41 of the injunction application filed before this court, it is evident that by an order dated April 11, 1991, the name of one Janab Maleque Ali Shah has been recorded as joint mutwalli in place of Janab Moslem Ali Shah, since deceased, along with the surviving mutwallis Janab Khelafat Ali Shah and

Janab Sekendar Ali Shah, in respect of the concerned wakf estate.

5. Learned counsel submits that the respondents are the heirs and legal representatives of Janab Sekendar Ali Shah upon whose demise, the said respondents are entitled to mutwalliship in the suit property.
6. Accordingly, it is submitted, an application for recording their names as mutwallis has already been filed and is now pending adjudication.
7. It is further pointed out that by adopting fraudulent means, the appellant had his own name recorded as the sole mutwalli in respect of the suit property despite the mutwalliship being joint, as evidenced from the annexure referred to above. A part of the property has also been recorded in the appellant's own name, portraying the same to be a secular property.
8. Thus, there is no basis for grant of injunction.
9. However, in paragraph nos. 6 and 13 of the injunction application filed before the Tribunal by the appellant, it has been averred that the defendant nos.1 to 7 have no right, title and interest over the schedule property but are continuously threatening the plaintiff in managing the wakf estate as well as cultivating the schedule property.

10. It is an *ad interim* deemed refusal of injunction on the strength of such application, against which the present appeal has been filed.
11. Thus, it was for the Tribunal to proceed on the premise of the averments made in the plaint and the injunction application to consider the grant of *ad interim* injunction.
12. On the pleadings as made out in the injunction application before the Tribunal, it is evident that the appellant is at least one of the mutwallis in respect of the property and, on the basis of the averments on oath made therein, is also cultivating the suit property.
13. Although, from the annexures to the said injunction application, it transpires that land in one khatian has been recorded in the name of the appellant, the same is different from the suit property and has no apparent connection with the same. Inasmuch as the suit khatian is concerned, the land therein has been recorded in the name of the appellant, but in the capacity of a mutwalli of the concerned wakf estate.
14. Another aspect of the matter has to be looked into.
15. Learned counsel for the respondent nos.1 to 7 submits that the Tribunal, being *coram non judice*, could not have adjudicated the prayer for *ad interim* order in any event and, as such, argues that the

impugned order cannot be deemed to be an order of refusal, the Tribunal not being in seisin of the matter in accordance with law at all.

16. However, from the impugned order, we find that two existing members of the Tribunal along with the Chairman-in-Charge had entertained the suit and had also directed service of notices, thereby assuming jurisdiction in the matter.
17. Thus, we cannot agree with the submission of the respondents to the effect that the Tribunal did not entertain the matter at all.
18. The issue of whether the Tribunal was *coram non judice* can only be considered at the final hearing of the present appeal.
19. However, on the basis of the allegations made in the injunction application, we find a sufficient *prima facie* case being made out for grant of injunction, particularly since no affidavit-in-opposition has been filed by the appellant and could not be filed at the *ad interim* stage as well before the Tribunal.
20. Hence, CAN 1 of 2026 is allowed on contest, thereby granting injunction restraining the respondent nos.1 to 7 from interfering and/or disturbing the peaceful cultivation of the suit property by the appellant/petitioner till disposal of FMAT 228 of 2026.

21. In view of the appearance of the respondent nos.1 to 7, against whom the relief has been sought, through their learned Advocate, service of notice of the appeal on the said respondents is dispensed with.
22. Since no relief has been sought against the proforma respondents, service on the said proforma respondents is dispensed with as well.
23. The appeal be treated to be ready as regards service.
24. The appellant shall prepare and file the requisite number of informal paper books without comparing with the records within three weeks from date and serve an advance copy of the same on the learned Advocate for the respondent nos.1 to 7.
25. The trial courts need not be called for.
26. The appeal be listed for hearing in the monthly list to be published immediately after the opening of this court subsequent to the upcoming Annual Vacation.

**(Sabyasachi Bhattacharyya, J.)**

**(Sandip Kumar De, J.)**