



2026:CHC-AS:478-DB

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 Supratim Bhattacharya

FMA No. 1337 of 2025

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CAN 1 of 2025

Ashok Kumar Das and another  
-vs-  
Smt. Dipa Behera alias Anita Paik and others

For the appellants : Mr. Rabindra Narayan Dutta,  
Mr. Sibasis Ghosh,  
Mr. Hare Krishna Halder,  
Mr. Ardhendu Nag,  
Mr. Soham Banerjee

For the respondent no. 1 : Mr. Sekhar Pal,  
Mr. Mobakshar islam,  
Mr. Krishna Pada Majumder

Heard on : March 25, 2026.

Judgment on : March 25, 2025.

**Sabyasachi Bhattacharyya, J.:**

1. The affidavit-of-service filed in Court today be kept on record.
2. In view of the short question involved, the appeal itself is taken up for hearing along with the application.



3. The present challenge has been preferred by defendant nos. 1 and 2 in a suit for partition, against an order granting ad interim injunction in favour of the plaintiff/respondent no. 1 against the defendants in the suit.
4. Learned counsel appearing for the appellants submits that the appellants were guilty of suppression of materials fact before the learned Trial Judge, inasmuch as in paragraph no. 6 of the plaint, a suit filed by the proforma defendant no. 2 (appellant no. 2 herein), bearing Title Suit No. 886 of 2021 has been referred to, without disclosing that, in the said suit, an order of injunction was obtained by the present appellants against the plaintiff/respondent no. 1 restraining the latter from making any construction without due process of law on the subject property and/or transferring the same to any third party.
5. Moreover, in view of an order of injunction obtained in a separate suit by the proforma defendant nos. 3 to 13 herein having been set aside in appeal, the present prayer for injunction ought not to have been passed.
6. Learned counsel next points out that the suit is bad in its present form, since although the suit has been couched as one for partition, it has been averred in paragraph no. 12 thereof



that the principal defendant nos. 1 and 2, that is, the present appellants, have no right, title, interest and possession of the suit property, but the defendant no. 2/appellant no. 2 has duly recorded his name in the record of rights.

7. It is argued that if it is claimed that the defendants have no title to the property, a partition suit cannot lie against such defendants, since such a suit is maintainable only amongst co-owners of the property.
8. Also, it is submitted that the suit has been couched as one for partition simpliciter, without seeking appropriate relief of declaration.
9. Learned counsel places reliance on a judgment in the case of *Bloomberg Television Production Services India Private Limited and others vs. Zee Entertainment Enterprises Limited*, reported at 2024 (3) Indian Civil Cases 134 (S.C.), where the Hon'ble Supreme Court, by relying on its previous judgments, including *Morgan Stanley Mutual Fund Vs. Kartick Das* reported at (1994) 4 SCC 225, laid down the parameters and tests which are to be reflected in an order of *ex parte* ad interim injunction.



10. It is submitted that the said parameters have not been adhered to by the learned Trial Judge in the present case.
11. Learned counsel for the appellants also cites a co-ordinate Bench judgment of this Court in the case of *Karnani Properties Limited Vs. Harrow Hall, a Registered Society and others* reported at 2025 (4) *Indian Civil Cases (Cal.)* where the Court had observed in the facts of the case that there was suppression of material facts, which tantamounted to deliberate suppression and misrepresentation for obtaining the ad interim injunction. It was further observed that having deliberately suppressed those facts, the plaintiffs therein were grossly guilty of suppression of material facts, which entitled the defendant no. 1/appellant therein to have an order vacating the original ad interim order of injunction.
12. Learned counsel appearing for the respondents argues that the defendant nos. 1 and 2/ appellants have failed to prove their possession in respect of the suit property, although they have erroneously recorded their names in the records of rights. It is further submitted that in view of the disturbance created by the appellants to the plaintiffs' possession, the plaintiff/respondent no.1 was compelled to file the present suit.



13. Upon hearing learned counsel for the parties, we are unable to accept the contention of the appellants that the plaintiff was guilty of gross suppression of material facts.
14. In paragraph no. 6 of the plaint, the suit filed by the defendant no. 2 has been referred to. Although there is no mention in the plaint of the current suit as to an injunction order having been granted against the plaintiff/respondent no. 1 in a different suit, the same does not militate against the present impugned order, nor does it have any material bearing on the same.
15. By the order dated December 21, 2021 passed in the other suit instituted by the appellants herein, bearing Title Suit No. 886 of 2021, the defendants therein (including the present plaintiff) were restrained from making any construction without due process of law on the subject property and/or transferring the same to any third party.
16. On the other hand, by the order impugned in the present appeal, both parties have been directed to maintain *status quo* in respect of the nature, character, ownership and possession of the suit property. Thus, the present order, while maintaining the injunction granted by the earlier court against the



plaintiff/respondent in the form of *status quo*, further enjoined the defendant nos. 1 and 2/appellants in respect of change of nature, character, ownership and possession of the suit property. Hence, the two orders not being mutually exclusive, the so-called suppression of the earlier order does not have the effect of dislodging the premise of the impugned order. Thus, non-disclosure of such order cannot be labelled as suppression of a “material” fact.

17. Insofar as the setting aside of the injunction order obtained by the proforma defendants in another suit is concerned, the same has been disclosed in paragraph nos. 7 and 8 of the plaint. As such, we do not find any suppression on such count as well.
18. However, we find substance in the contention of the appellants that the suit, as per its present frame, is not maintainable due to mis-joinder of causes of action. It is well settled that in a suit for partition simpliciter, it is only the co-owners and all the co-owners who are required to be impleaded. It is entirely beyond the ambit of a partition suit simpliciter to bring within the array of parties any third party admittedly having no title in the property.



19. The plaintiff/respondent no. 1 in the present suit has impleaded the present appellants as the principal defendants, although it has been categorically stated in paragraph no. 12 of the plaint that the appellants do not have any right, title, interest and/or possession in the suit property.
20. Even in paragraph no. 14 of the plaint, it has been alleged that the appellants tried to encroach upon the B- Schedule property of the present suit.
21. However, in the same breath, in relief (a) of the plaint, a preliminary decree of partition has been sought in respect of the plaintiff's share in respect of the subject property, apparently against all the defendants, including the appellants.
22. Again, in relief (b) of the plaint, it has been prayed that if the the defendants and proforma defendants fail to make amicable partition, then a 'Survey Passed Lawyer' be appointed to make partition.
23. Thus, the reliefs sought in the plaint are diametrically opposite to the averments made in paragraph nos. 12 and 14 of the same, at least insofar as the defendant nos. 1 and 2/appellants are concerned.



24. Hence, the suit is *ex facie* bad for mis-joinder of causes of action.
25. Secondly, in paragraph no. 12, the plaintiff/respondent no. 1 further alleged that despite the defendant nos. 1 and 2/appellants, without having any right, title, interest or possession in the suit property, the defendant/appellant no. 2 has duly recorded his name in the office of the Block Land & Land Reforms Officer, Rajarhat.
26. It has been claimed in the said paragraph that such recording is erroneous and baseless and not binding upon the plaintiff.
27. However, surprisingly, no declaration has been sought specifically in respect of the title of the plaintiff, which has evidently been clouded by the dispute raised by the present appellants, as admitted in paragraph no. 12 of the plaint, nor has any declaration been sought challenging the title of the defendant nos.1 and 2 in respect of the suit property.
28. In the conspectus of the plaint case as made out against the present appellants, such declarations were prerequisites and a mandatory requirement for getting the consequential relief of partition sought by the plaintiff. In fact, the declaratory



relief would be the appropriate principal relief and the relief of partition would be relegated to a consequential prayer.

29. If the plaintiff seeks to press the reliefs against the defendant nos. 1 and 2, it could not be by way of a partition, but by way of declaration, as indicated above, and appropriate permanent injunction.
30. Having not done so, we find that the plaint does not disclose any cause of action against the defendant nos. 1 and 2/appellants insofar as the reliefs claimed are concerned.
31. It is well-settled that the maintainability of the suit is an essential component of *prima facie* case which, having not been substantiated, the plaintiff / respondent no. 1 was not entitled to any injunction order.
32. Furthermore, apropos *Bloomberg Television (supra)*, cited by the appellants, we find that the parameters of grant of *ex parte* ad interim injunction as stipulated therein have also not been complied with by the learned trial Judge inasmuch as no specific reasons as contemplated under the proviso to Order XXXIX Rule 3 of the Code of Civil Procedure have been assigned in the impugned order, thus vitiating the said order.



33. Hence, in view of the above discussions, the remedy before the plaintiff/respondent no.1 would be to elect her reliefs by either choosing to continue with the suit by seeking appropriate reliefs against the defendant nos. 1 and 2/appellants and file a separate suit for partition against the admitted co-owners or to continue the suit in its present form against the proforma defendants by arraying them as principal defendants and taking appropriate steps for amendment of the plaint to expunge the names of the defendants/appellants as well as incorporating appropriate amendments with regard to the averments made and reliefs sought in respect of the said defendants.
34. Be that as it may, in view of the above findings, the impugned order cannot be sustained.
35. Accordingly, FMA No. 1337 of 2025 is allowed on contest against the plaintiff/respondent no. 1, thereby setting aside the impugned order dated May 22, 2025 passed by the learned Civil Judge (Senior Division), First Court, Barasat, District-North 24 Parganas, in Title Suit No. 532 of 2025.
36. CAN 1 of 2025 is accordingly disposed of as well.
37. There will be no order as to costs.



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

I agree.

**(Sabyasachi Bhattacharyya, J.)**

**(Supratim Bhattacharya, J.)**