



2026:CHC-AS:514-DB

14.01.2026

Item no.DL 21
Court No. 16

Asraf, A.R.(Ct.)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Case No. **FMA 8 of 2026**
with
CAN 1 of 2025

In the matter of :

ANISUR RAHAMAN (Minor)
represented by his mother and next friend Kariba Bibi
.... Appellant
VS.

HAFIZUR RAHMAN & ANR.
.... Respondents

For the Appellant :

Mr. Kaustav Banerjee
Ms. Ria Kundu

.... Advocates

1. The present appeal has been preferred against an order whereby the temporary injunction applications filed both by the plaintiff / respondent no.1 as well as the added defendant / appellant were dismissed.
2. Learned counsel for the appellant submits that the partition suit, from which the present appeal arises, was instituted by the plaintiff against the original defendant. In the plaint, it was admitted that the original defendant was in occupation of the northern side of the suit property whereas the plaintiff of the southern side thereof, as per their understanding.
3. Immediately after institution of the suit, which was then beyond the knowledge of the present



appellant, the sole defendant transferred his share of the property by demarcation in favour of the present appellant.

4. On the strength of such purchase, subsequently upon coming to know of the suit, the appellant took out an application for being added as a party to the suit under Order I Rule 10 of the Code of Civil Procedure, which was allowed vide order dated June 17, 2025.
5. It is submitted that the said application for addition of party was observed by the learned Trial Judge to be formal in nature and was allowed without any contest by the plaintiff.
6. Subsequently, since the plaintiff attempted to make construction by disturbing the possession of the added defendant / present appellant in respect of his purchased portion, a temporary injunction application was filed by the present appellant.
7. Another temporary injunction application had already been filed previously by the plaintiff, which was then pending.
8. In aid of the appellant's injunction application, a local inspection was applied for, which was allowed. The resultant Commissioner's report indicates that construction materials were stored



on the property, although no construction was going on at the time when the Commissioner visited the property.

9. It is argued that in view of the plaintiff / respondent no.1 seeking to raise construction, which is an admitted position, since the plaintiff apparently relied on some conversion certificate and Panchayat plan, copies of which were never given to the appellant, there is immediate danger of the best portion of the property being altered by the plaintiff / respondent no.1, thereby necessitating injunction to be imposed. However, the learned Trial Judge overlooked the said aspect of the matter and merely on the basis of such purported Panchayat plan, permitted the plaintiff to make such construction without granting any injunction in favour of the added defendant/appellant.
10. On a perusal of the plaint, we find that in paragraph no.3 thereof the plaintiff / respondent no.1 has admitted that the original defendant was in occupation of the northern portion of the suit property whereas the plaintiff / respondent no.1 is in possession of the southern side thereof.
11. It is further found from the Commissioner's report that although at the juncture when the



Commissioner visited the spot, no construction was going on, nonetheless, construction materials were accumulated on the property, which apparently indicates the intention of the plaintiff to make construction.

12. In fact, in the impugned order, it is recorded that the plaintiff submitted photocopies of conversion certificate as well as Panchayat plan, which further go on to show the intention of the plaintiff/respondent no. 1 to make such construction on the suit property.
13. However, *prima facie*, the learned Trial Judge erred in law in relying on such photocopies, since no written objection was filed by the plaintiff / respondent no.1 to the injunction application of the added defendant / appellant, nor was any copy of the said documents handed over to the present appellant.
14. It is well-settled that there cannot be proof beyond pleadings. By following such principle, the reliance of the learned Trial Judge on mere photocopies of purported conversion certificate and Panchayat plan, without there being any pleading to that effect on the part of the plaintiff, was erroneous.



15. Moreover, the fact that the Commissioner's report indicates that there is no new construction yet commenced on the property and that construction materials have been accumulated on a portion of the property, made it all the more necessary for the learned Trial Judge, in order to protect the suit property till the disposal of the suit, to grant injunction restraining the plaintiff from altering the nature and character of the suit property by raising a construction on his arbitrarily chosen portion of the property.

16. It is not the case of the plaintiff / respondent no.1 that any construction has already been commenced or is on the verge of being finished, which could have tilted equities in favour of the plaintiff; on the contrary, the Commissioner's report shows that there is an old structure but no new construction has yet been commenced. Thus, the balance of convenience and inconvenience and *prima facie* case are in favour of grant of injunction in favour of added defendant / appellant to ensure that the nature and character of the suit property is not altered, particularly in the teeth of the allegations of the added defendant/appellant that such proposed construction is intended to be raised on the added defendant's purchased portion of the suit



property, which was admitted by the plaintiff in his plaint averments to be in occupation of the original defendant, who is the vendor of the added defendant/appellant.

17. Hence, the appeal, bearing FMA 8 of 2026, is admitted, to be heard on the above questions and the other grounds taken in the memorandum of appeal.

18. In view of a *prima facie* case having been made out, as well as there being imminent apprehension of the plaintiff/respondent no.1 raising construction on a portion of the suit property, and the balance of convenience and inconvenience being in favour of grant of injunction, the plaintiff/respondent no.1 and/or his men and agents are restrained by an order of injunction from changing the nature and character of the suit property and/or the existing possession in respect of the suit property till disposal of the present application.

19. The appellant shall serve copies of the application, bearing CAN 1 of 2025, as well as the memorandum of the appeal on the respondent no.1, indicating that the application shall be listed for hearing in the Monthly List of February, 2026,



and file an affidavit of service to that effect when the matter is next taken up for hearing.

20. Service on the defendant / proforma respondent no.1 is dispensed with in view of no relief having been sought against the proforma respondent.

21. Parties shall act on the basis of server copy of this order, duly downloaded from the official website of this Court.

22. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties expeditiously upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)