

2<sup>nd</sup> March,  
2026  
(AK)  
23

**F.M.A. 16 of 2026**  
**IA No: CAN 1 of 2025**

Pradip Mondal @ Pradip Kumar Mondal  
Vs.  
Prabir Kundu and others

Mr. Aritra Roy Chowdhury  
Mr. Sital Chakraborty  
Ms. Susmita Nath

...for the appellant.

1. The plaintiff in a suit for partition has preferred the instant appeal against an order whereby the vacating application of the defendants/respondents under Order XXXIX Rule 4 of the Code of Civil Procedure has been allowed, thereby vacating the initial *ad interim* order of injunction passed in favour of the plaintiff/appellant.
2. Learned counsel for the appellant submits that although, on paper, only the application for vacating was allowed, in effect, the temporary injunction application of the appellant was itself dismissed, since the learned Trial Judge, while passing the impugned order, took into consideration not only the application under Order XXXIX Rule 4 but also the injunction application and the written objection thereto and did not fix any further date for hearing of the temporary

injunction application, which indicates that the temporary injunction application was also disposed of by the impugned order.

3. We find, upon hearing learned counsel for the appellant, that the learned Trial Judge vacated the interim order on the ground of suppression of material fact on the count that it was not specifically disclosed by the plaintiff/appellant at the inception that out of the entire suit property, 1.00 acre of land is submerged under water.
4. However, it is evident from the materials annexed to the plaint and the injunction application that the factum of a portion of the suit property being purportedly submerged under water was disclosed in the gift deed produced by the plaintiff/appellant, executed in his favour, itself.
5. Secondly, from the extracts of the records of rights, apparently also furnished along with the temporary injunction application, it would be evident that the relevant plot, that is, plot no.7524 has not been shown to be submerged under water.
6. Thus, there is no question of suppression of any material fact, since both the said facts were disclosed before the learned Trial Judge.
7. In any event, the factum of a part of the suit property being apparently submerged under water is evident from the gift deed relied on by the

plaintiff/appellant at the time of obtaining the initial order of *ad interim* injunction.

8. In such view of the matter, we are *prima facie* of the opinion that the learned Trial Judge acted without jurisdiction and *de hors* the law in vacating the *ad interim* injunction order granted initially in favour of the plaintiff on the ground of suppression of material facts, without the necessary yardsticks of Order XXXIX Rule 4 of the Code of Civil Procedure being met.
9. Even otherwise, the factum of a portion of the suit premises being submerged under water, in our opinion, is not a germane consideration for the purpose of adjudicating an *ad interim* prayer for injunction, particularly in view of the fact that the suit is one for partition and the endeavour of the court ought to have been to maintain the subject matter of the same *in statu quo*.
10. On the second ground considered by the learned Trial Judge, to the effect that the transfers effected by the gift deed were apparently of specified and demarcated portions, we also find from a bare perusal of the said deed of gift, that such observation is apparently not correct.
11. Thus, the appeal is admitted and shall be heard on the above questions and the other grounds taken in the Memorandum of Appeal.

12. The respondents and/or their men and agents shall remain restrained by an order of injunction from selling, transferring, alienating and/or encumbering and/or creating any third party interest in respect of the suit property and/or from changing the nature and character of the suit property till disposal of the application.
13. Both parties shall also maintain status quo in respect of the existing physical possession in respect of the suit property, also till disposal of the present application.
14. The appellant shall serve copies of CAN 1 of 2025, along with copies of Memorandum of Appeal, on the respondents, indicating that the application shall next be listed in the monthly list of April, 2026, when an affidavit-of-service to that effect shall be filed by the appellant.

**(Sabyasachi Bhattacharyya, J.)**

**(Supratim Bhattacharya, J.)**