

(2026) 08 CAL CK 2988

In the Calcutta High Court

Case No : FMA 735 of 2026 with CAN 1 of 2026

Radha Kumari

APPELLANT

Vs

Manisha Singh

RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Code of Civil Procedure — Order XXXIX Rule 3A

Citation : (2026) 08 CAL CK 2988

Hon'ble Judges : Sabyasachi Bhattacharyya, J; Supratim Bhattacharya, J

Bench : Division Bench

Advocate : Mr. Chiranjib Sinha, Mr. Satyam Mukherjee, Mr. Kuntal Ghosal, Mr. Kaushik Dey, Mr. Rajnish Kalawatia

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J.:

1. Affidavit of service filed today be kept on record.
2. The present appeal has been preferred against the refusal of ad-interim injunction in a suit for declaration of title and permanent injunction filed by the plaintiff/appellant.
3. The appeal is admitted to be heard on the grounds taken in the memorandum.
4. In view of the appeal and the application being identical insofar as the issues involved are concerned, which are brief in nature, we take up the appeal for hearing along with the application on the basis of the papers before us.
5. The learned Trial Judge refused to grant ad interim injunction on the ground that the chain of title as pleaded "appears complicated", being based upon several successive transfers, and requires full-fledged trial and evidence for proper adjudication.
6. Secondly, it was observed that allegations of trespass and illegal construction

were not supported by any contemporaneous documentary evidence establishing the plaintiff's actual physical possession immediately prior to the alleged incident and that the appellant admittedly resides outside the State of West Bengal and the entire case is based substantially upon information allegedly received from his constituted attorney.

7. Delay in approaching the Court was also cited as a ground for such refusal. The learned Trial Judge held further that the grant of injunction at this stage would virtually amount to granting final relief in the suit.

8. Learned counsel appearing for the plaintiff/appellant submits that along with the plaint, documents in support of the entire chain of title of the plaintiff/appellant, starting from his predecessors-in-interest, were disclosed. Furthermore, several tax receipts and other documents were also produced in support of the contention that the plaintiff is in possession of the suit premises.

9. As such, at the ad interim stage, it is submitted, the learned Trial Judge ought to have proceeded on the premise of the averments made in the plaint and the injunction application and the documents filed in support thereof.

10. Learned counsel appearing for the respondent controverts the arguments of the appellant and submits that substantial construction has already been raised by the respondent on the subject property with a valid sanction plan. Furthermore, it is argued that prior to the transfer in favour of the predecessor-in-interest of the appellant, the property was transferred in favour of the respondent's predecessor.

11. Hence, it is submitted that not only does the plaintiff/appellant not have a *prima facie* case to go for trial, the balance of convenience and inconvenience is also in favour of refusal of injunction.

12. However, the law is well-settled that at the stage of grant of *ex parte* ad interim injunction, it is only the averments made in the plaint and the injunction application and the documents submitted therewith which are to be considered by the Trial Court. Since, at that stage, no controversy is available at the part of the defendant, there arose no occasion for the learned Trial Judge to look into the contentions of the defendant.

13. On the face of it, it transpires that the learned Trial Judge proceeded on erroneous principles and yardsticks. The mere fact that the chain of title, as pleaded, appears "complicated" does not entitle the Trial Court to shirk its duty and relegate even the consideration of the prayer for ad interim injunction to a later stage of the suit.

14. Moreover, the learned Trial Judge completely overlooked the substantive documents produced by the plaintiff/appellant in support of her *prima facie* case.

15. Even otherwise, since injunction was sought regarding change of nature and character of the suit property, the question of possession was not so germane as

portrayed in the impugned order. The fact that the appellant resides outside the State of West Bengal is utterly irrelevant, since despite having residence outside the State, nothing prevents a purchaser to have title and possession in respect of the purchased property.

16. Also, the logic of the Trial Court that the injunction, if granted at the ad interim stage, would tantamount to granting final relief, is patently fallacious, since it is open to the Trial Court, in order to preserve the suit property, if a *prima facie* case is made out, to grant prohibitory injunction in aid of the final relief sought in the suit.

17. Learned counsel for the appellant fairly submits at this juncture that in view of no ad interim order having been granted, there was no compliance of order XXXIX Rule 3A of the Code of Civil Procedure. Accordingly, the learned advocate-on-record for the appellant shall hand over a complete copy of the temporary injunction application and the plaint filed in the Trial Court along with the documents filed therewith/ annexed thereto and/or relied upon by the plaintiff/appellant to the learned advocate-on-record for the respondent during the course of the day.

18. Needless to say, the grounds of objection raised by the respondent before this Court are also required to be looked into, being serious in nature. However, at this stage, the Appellate Court cannot transgress beyond the jurisdiction of the Trial Court, which was confined to the averments made in the plaint and the injunction application and the documents filed in support thereof.

19. Accordingly, FMA 735 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order no. 2 dated May 22, 2026 passed by the learned Civil Judge (Senior Division), Second Court at Baruipur, District – South 24 Parganas in Title Suit no. 290 of 2026, and restraining the respondent and her men and agents by an order of injunction from changing the nature and character of the suit property in any manner whatsoever till disposal of the temporary injunction application in the Trial Court.

20. Subject to the defendant/respondent filing her written objection to the temporary injunction in the Trial Court within a fortnight from date, the learned Trial Judge shall make endeavour to dispose of the injunction application itself as expeditiously as possible, preferably within six weeks from the date of communication of this order to the learned Trial Judge.

21. We make it abundantly clear that the merits of the contentions of the parties have only been tentatively dealt with in this judgment and the above observations shall not be considered to be binding at any further stage of the injunction application or the suit. It will be open to the learned Trial Judge to independently decide the injunction application and the suit in accordance with law and on their own merits.

22. Consequentially, CAN 1 of 2026 is also disposed of.

23. No order as to costs.

24. Urgent certified copies of this judgment and order, if applied for, be supplied to the parties upon compliance of requisite formalities.

I agree. (**Sabyasachi Bhattacharyya, J.**)