

**(2026) 08 CAL CK 3001**  
**In the Calcutta High Court**  
**Case No : FMAT 155 of 2026**

Smt. Maya Ghosh & Anr.

APPELLANT

Vs

Sri Sukhendu Ghosh & Ors.

RESPONDENT

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**Date of Decision :** 03-08-2026

**Acts Referred:**

**Citation :** (2026) 08 CAL CK 3001

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

**Bench :** Division Bench

**Advocate :** Mr. Ayan Banerjee, Ms. Debasree Dhamali, Ms. Riya Ghosh, Mr. Gopal Chandra Ghosh, Snr. Adv., Mr. Nabakumar Karmakar, Mr. Rajkrishna Mondal, Dr. Suravi Ghosh, Ms. Sunandana Saha, Mr. Rabindra Kr. Jaiswal

**Final Decision :** Allowed

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## **Judgement**

### **Sabyasachi Bhattacharyya, J.:-**

1. Upon hearing learned counsel for the parties and perusal of the averments made in the condonation application, we find sufficient explanation regarding the delay in preferring the appeal to have been furnished inasmuch as, due to erroneous legal advice, initially a revision was preferred instead of an appeal against the impugned order of refusal of injunction; upon detection of the same, the present appeal has been preferred.

2. Accordingly, CAN 1 of 2026 is allowed, thereby condoning the delay in preferring FMAT 155 of 2026.

3. There will be no order as to costs.

4. The appeal is admitted to be heard on the grounds taken in the memorandum of appeal.

5. In view of the short point involved, we take up the appeal along with the application for disposal.

6. Learned counsel for the plaintiffs/appellants argues that the impugned order is cryptic insofar as the reasons are concerned. By way of reason, the learned Trial Judge only relied on certain judgments cited by the plaintiffs without advertent to the materials on record or the averments of the parties. Even the said decisions, it is submitted, do not pertain to the issues involved in the suit and do not have any application at all.

7. Learned counsel for the appellants further submits that although a previous partition suit is pending, the same is in respect of other plot numbers in which the respondent no.1, who is a subsequent purchaser from the original co-owners being the respondents nos. 2 and 3, does not have any title. Thus, it is submitted that the present suit is very much maintainable even without bringing the plots, where the respondent no.1 is not an owner, within the hotchpot of the instant suit.

8. It is further contended that in the event third party interests are created, since admittedly a multistoried building has been constructed by the respondent no.1 over the suit property, the interest of the plaintiffs/appellants would be prejudiced and they may suffer irreparable injury.

9. Learned senior counsel appearing for respondent no.1 points out that in the absence of any partition by metes and bounds between the different properties situated in the dag numbers covered by the present suit and the earlier suit, the present suit is bad for non-joinder of all the joint properties of the parties as well as for non-joinder of the other co-sharers as necessary parties.

10. Learned senior counsel further submits that from the Schedule-A property as described in the plaint of the present suit, it will be evident that the total area of the suit property is 99 decimals, whereas in paragraph no.6 of the plaint and in other places the total plot has been described to be of 1.29 acres. Thus, it is argued that the suit is bad for partial partition as well.

11. That apart, learned senior counsel points out that no injunction has been sought in the trial court restraining transfer of the property and, as such, the same cannot be prayed for the first time before this Court.

12. Learned counsel appearing for the respondents nos. 2 and 3, apart from adopting the arguments of the respondent no.1, submits in addition that subsequent to the impugned order, an amendment application has been filed in the earlier suit for partition filed by the plaintiffs/appellants with regard to other plot numbers, seeking to incorporate the plot numbers which are the subject-matter of the present suit as well.

13. Thus, the second suit, that is, the present suit, is not maintainable for the self-same reliefs as in the earlier suit.

14. Upon consideration of the arguments of the parties, we restrain ourselves from entering into the merits of the case, for the simple reason that the impugned order is as cryptic as can be regarding reasons and ought to be set

aside on such ground alone. After narrating the respective arguments of the parties and the judgments cited, the learned Trial Judge, by way of purported reasons, merely recorded that the learned Judge had carefully gone through the citations and found those squarely applicable in the instant situation and therefore, the prayer for temporary injunction was liable to be rejected.

15. We find such finding to be patently perverse and cryptic, since none of the pleadings of the parties and/or the materials before the Court, which were vital for the adjudication, were at all adverted to or discussed, thereby the learned Trial Judge shirking the duty cast upon the Court while deciding an application for temporary injunction. The impugned order cannot be sustained on such ground alone.

16. Thus, since we intend to remand the matter to the learned Trial Judge, we abstain from making any observations on merits of the case which might have the effect of prejudging the issues to be considered afresh by the learned Trial Judge.

17. In view of the above, FMAT 155 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 18 dated January 08, 2026 passed by the learned Civil Judge (Senior Division), First Court at Barasat, District: North 24 Parganas in Title Suit No.1102 of 2024, and remanding the temporary injunction application to the learned Trial Judge for being re-adjudicated on merits, upon giving a fresh opportunity of hearing to both parties on the materials already on record.

18. The learned Trial Judge, upon such fresh hearing, shall pass a reasoned order deciding the injunction application.

19. In view of the considerable time having already elapsed, it is expected that the learned Trial Judge shall complete such fresh adjudication as expeditiously as possible, positively within six weeks from the date of communication of this order to the learned Trial Judge.

20. We make it clear that nothing in the above order shall preclude the parties from making any further interlocutory application, for amendment of plaint or otherwise, in the suit and from objecting to such application(s), if filed by the other side.

21. CAN 2 of 2026 is consequentially disposed of as well.

22. There will be no order as to costs.

23. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

I agree.