

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**FMA No.8 of 2026
IA No: CAN 1 of 2025**

**ANISUR RAHAMAN (MINOR),
represented by his mother and next friend Kariba Bibi
-versus-
HAFIZUR RAHMAN and Another**

For the appellant : Mr. Kaustav Banerjee,
Ms. Ria Kundu

For the respondents : Mr. Pratip Kumar Chatterjee, Sr. Adv.,
Mr. Chittapriya Ghosh,
Mr. Ashish Deb,
Mr. Tridip Mishra,
Ms. Maitrayee Chatterjee

Heard on : 24.03.2026

Reserved on : 24.03.2026

Judgment on : 31.03.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises out of Order No.11 dated December 3, 2025, passed in Partition Suit No.258 of 2024, which was instituted by the respondent no.1 on June 24, 2024.

- 2.** The suit was initially filed only against the proforma respondent no.2 herein. *Vide* Order No.02 dated July 5, 2024, an ad interim order of injunction was passed, restraining the original defendant/proforma respondent no.2 from disturbing the peaceful possession of the plaintiff/respondent no.1 over the suit property. The said order was passed in connection with an application for temporary injunction seeking a restraint order on the original defendant from disturbing the plaintiff's possession as well as from transferring the best portion of the suit property to any third party.
- 3.** During pendency of the suit, the original defendant/proforma respondent no.2 transferred portions of his share of the suit property in favour of the present appellant, respectively by a gift deed dated July 8, 2024 and a sale deed dated July 12, 2024, both registered documents. Consequently, the appellant, through his next friend/mother Kariba Bibi, filed an application for being impleaded in the suit, which was allowed without objection *vide* order dated June 17, 2025. By the same order, an application under Order XXXIX Rule 7 filed by the appellant for local inspection was also allowed, thereby appointing an Advocate Commissioner to hold local inspection in respect of the suit property. The added defendant/appellant filed a third application too, for injunction restraining the plaintiff/respondent no.1 from forcibly evicting the appellant from the suit property and further restraining the plaintiff/respondent no.1 from constructing any boundary wall and/or making any construction on the best portion of the property as well as from changing the nature and character of the same

- 4.** On September 2, 2025, the ad interim injunction order dated July 5, 2024, obtained by the plaintiff, was extended till January 12, 2026. Challenging both the orders of ad interim injunction and extension of the same, the appellant preferred an appeal, bearing FMAT No.435 of 2025, before this Court, which was disposed of on October 14, 2025 with a direction upon the learned Trial Judge to take up the injunction application of the appellant as expeditiously as possible and to dispose it of preferably within a period of six weeks from the date of communication of the said order, in presence of both the parties.
- 5.** Meanwhile, the learned Advocate Commissioner filed his report on September 2, 2025, to which an exception was filed by the appellant on October 24, 2025. A written objection against the said exception was filed by the plaintiff/respondent no.1 on December 3, 2025.
- 6.** By the impugned order dated December 3, 2025, the injunction application filed by the plaintiff/respondent no.1 was dismissed on contest, vacating the ad interim order dated July 5, 2024. By the same order, the temporary injunction application which was filed by the added defendant/appellant on June 17, 2025, for restraining the plaintiff/respondent no.1 from forcibly evicting the appellant from the suit property and further restraining the plaintiff/respondent no.1 from constructing any boundary wall and/or making any construction on the best portion of the property as well as from changing the nature and character of the same, was also dismissed on contest.

- 7.** Challenging the said order dated December 3, 2025, to the extent that the appellant's injunction application was dismissed, the present appeal has been preferred.
- 8.** This appeal was admitted on January 14, 2026, simultaneously granting injunction restraining the plaintiff/respondent no.1 and/or his men and agents from changing the nature and character of the suit property and/or the existing possession in respect of the same till disposal of CAN 1 of 2025, filed in connection with the present appeal.
- 9.** The appeal, along with the application, was subsequently heard on March 24, 2026 and was reserved for judgment.
- 10.** Learned counsel appearing for the appellant argues that the learned Trial Judge erroneously dismissed the appellant's injunction application on the premise that no construction work was going on over the suit property, by overlooking the categorical finding in the Commissioner's Report that construction materials were found to be accumulated on the suit property as well as by ignoring the photographs annexed to the exception to the Commissioner's Report filed by the appellant, which substantiate such factual position.
- 11.** It is submitted that the learned Trial Judge also took into account the fact that the plaintiff had substantial share in the suit property as well as had obtained the required conversion and sanction building plan for construction, to dismiss the appellant's application for injunction.
- 12.** Learned counsel for the appellant argues that as per the Commissioner's Report dated September 2, 2025, at least till that date, no construction had

been made. Although a *pucca* room was found on the suit property by the learned Advocate Commissioner, the same was constructed much earlier.

- 13.** In Paragraph No.3, Clause (e) of the affidavit-in-opposition to CAN 1 of 2025, it has been admitted by the plaintiff/respondent no.1 that the local inspection report indicated that no construction was going on.
- 14.** The temporary injunction application of the added defendant/appellant was dismissed on December 3, 2025, till which date there could not have any construction, since one of the bases of refusal of the appellant's prayer for injunction was that no construction work was going on. Immediately thereafter, the present appeal was filed and this Court, *vide* order dated January 14, 2026, enjoined the plaintiff/respondent no.1 from changing the nature and character of the suit property and the existing possession thereof.
- 15.** Thus, within the short period of 41 days between the dismissal of the injunction order and the passing of ad interim order by this Court, there could not have any substantial construction. In any event, from the materials on record and the admission of the plaintiff, it is evident that there was no construction commenced on the date of passing of the impugned order. Thus, the dismissal of the appellant's injunction application, merely on the ground that permission for conversion as well as sanction building plan had been obtained by the plaintiff, could not be a valid ground for refusal of injunction, since the plaintiff is taking undue advantage of the same and trying to make construction on the best portion of the property,

thereby defeating the rights of the appellant, who has now stepped into the shoes of the original defendant as a co-sharer of the property.

- 16.** Learned counsel for the appellant next refutes the contention of the plaintiff/respondent no.1 that under Section 359 of Mulla's Principles of Mahomedan Law, the mother cannot be the legal guardian of a minor under Mohammedan Law and, as such, the appellant's minor could not act as his next friend.
- 17.** The appellant argues that the representation of the minor appellant by his mother is in the capacity of a 'next friend' as contemplated in Order XXXII of the Code of Civil Procedure (for short, "the Code"), and not as a 'legal guardian' under the personal law of the parties. It is argued that Order XXXII is secular in nature and not governed by personal law. As such, the question as to whether the mother is a legal guardian of a Mohammedan minor or not is immaterial for the purpose of representation of such minor in a suit, where there is no such restriction to the mother being the next friend of the minor.
- 18.** It is argued that Order XXXII Rule 3 of the Code is not attracted to the present case and there was no necessity for the court to appoint a 'legal guardian' of the minor appellant, since such provision is applicable only in cases where the minor is already a defendant in the suit. In the present case, however, the appellant got impleaded in the suit later, on his own application, through his next friend/mother. At that stage, the appellant was not a defendant in the suit and, as such, Rule 3 of Order XXXII was not attracted at all. Unless the appellant was represented through such next

friend, irrespective of any appointment of legal guardian under Rule 3 of Order XXXII, the appellant would not be able to cross even the threshold barrier of being impleaded in the suit.

- 19.** The appellant's counsel contends that rather than Rule 3, it is Rule 4 of Order XXXII which is applicable, permitting any person representing the interest of the minor to be his next friend.
- 20.** Learned counsel for the appellant also relies on Section 361 of Mulla's Principles of Mahomedan Law, as per which a person may neither be a legal guardian nor a guardian appointed by the court but may have voluntarily placed himself in charge of the person and property of the minor. Such person is called a *de facto* guardian who is merely a custodian of the person and property of the minor and is restrained only from alienating the immovable property of the minor under Section 364 of Mulla's Principles of Mahomedan Law.
- 21.** Thus, it is contended, the representation of the appellant through his mother, as his next friend, is valid in the eye of law.
- 22.** Learned counsel appearing for the appellant cites a judgment of a learned Single Judge of the Kerala High Court in *Abdul Samad v. Rasheedha and another*, reported at 2017 SCC OnLine Ker 5548, in support of the proposition that powers of a person accepted by the court as next friend of a minor plaintiff or appointed as guardian *ad litem* of a minor defendant is only limited to that legal proceeding and not beyond.
- 23.** Learned counsel further reiterates that although Order XXXII Rule 1 of the Code applies to plaintiffs *per se*, in a suit for partition, defendants are also

treated to be on the same footing as plaintiffs. Thus, the argument of the respondent no.1 to the effect that Order XXXII Rule 1 of the Code is not applicable, is not strictly correct.

- 24.** *Per contra*, learned senior counsel appearing on behalf of the plaintiff/respondent no.1 argues that Section 359 of Mulla's Principles of Mahomedan Law excludes the mother from being a legal guardian of the property of a minor. Thus, both the transfers in favour of the minor appellant through his mother as a next friend, as well as the injunction application and the defence of the appellant in the suit, also through the same next friend, are vitiated in law.
- 25.** Learned senior counsel further contends that Rule 1 of Order XXXII of the Code is applicable only to plaintiffs and not to defendants. The appropriate provision applicable to defendants is Rule 3 of Order XXXII. In terms of Rule 3, it is argued, where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian of such minor for the suit. Thus, it is argued that in case of defendants in a suit, in the absence of appointment of any such guardian under Rule 3, no one can represent the minor in the suit. Moreover, it is argued that since the expression "guardian" has been used in the said provision, the same is linked to the concept of "legal guardian" as propounded in Section 359 of Mulla's Principles of Mahomedan Law.
- 26.** It is also pointed out that the gift deed and sale deed executed in favour of the appellant through his mother, in the capacity of his next friend, are also

vitiated because the mother neither is, nor was at any point of time, the legal guardian of the minor as per Section 359, in respect of his property.

- 27.** Learned senior counsel for the plaintiff/respondent no.1 next submits that it is reflected from the Commissioner's Report itself that there was one room on the suit property, thereby suggesting that a construction has already been made on the property. Moreover, the period of 41 days between passing of the order impugned in this appeal and the interim order of injunction passed by this Court was sufficient for substantial further construction to be made by the plaintiffs/respondent No.1. It is also submitted that in view of conversion of the property as well as a valid sanction plan to make construction thereon having already been obtained by the plaintiff, in the event injunction were to be granted, the plaintiffs/respondent No. 1 would suffer irreparable injury and that the balance of convenience and inconvenience enures in favour of the plaintiff.
- 28.** Upon hearing learned counsel for the parties, two primary issues fall for consideration before us – whether the appellant is properly represented through his mother as next friend and whether the learned Trial Judge was justified in refusing to grant injunction on merits.

Whether the appellant is properly represented through his mother as next friend

- 29.** In order to adjudicate the first issue, the language of Sections 359 and 361 of Mulla's Principles of Mahomedan Law are required to be considered, which are set out below:

“359. Legal guardians of property *The following persons are entitled in the order mentioned below to be guardians of the property of a minor:—*

(1) the father;

(2) the executor appointed by the father's will;

(3) the father's father;

(4) the executor appointed by the will of the father's father.

361. De facto guardian *A person may neither be a legal guardian (359) nor a guardian appointed by the Court (360) but may have voluntarily placed himself in charge of the person and property of a minor. Such a person is called de facto guardian. A de facto guardian is merely a custodian of the person and property of the minor.”*

- 30.** It is relevant to note that the representation of a minor through next friend is in a court of law is governed by Order XXXII of the Code and not the personal law of the parties. As per Rule 1 thereof, every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. On the other hand, Rule 3 provides that where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor and an order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff, which is required to be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed. Any order on such application, in terms of sub-rule (4) of Rule 3, shall not be made except upon notice to any guardian of the minor

appointed or declared by an authority in that behalf or, where there is no such guardian, upon notice to the father, or where there is no father, to the mother, or where there is no father or mother, to other natural guardians of the minor.

- 31.** Rule 4 of Order XXXII provides that “any person” who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit. The proviso thereto stipulates that the further restrictions that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff.
- 32.** Rule 5 of Order XXXII provides that every application to the Court on behalf of a minor, other than an application under Rule 10(2), shall be made by his next friend or by his guardian for the suit. Rule 10(2) provides that where the pleader of such minor omits within a reasonable time to take steps to get a new next friend appointed (on the retirement, removal or death of the next friend), any person interested in the minor or in the matter-in-issue may apply to the court for the appointment of one, and the court may appoint such person as it thinks fit.
- 33.** Thus, the scheme of representation of a minor as enumerated in Order XXXII is secular in nature, without being tied up to the personal law of any of the parties. The court has wide powers to appoint a next friend or permit a minor to be represented by a next friend or guardian for the purpose of the suit, provided that such next friend or guardian does not have any interest adverse to the minor.

- 34.** Hence, the concept of “legal guardian” under the Mohammedan Law is not germane for the present consideration.
- 35.** Even Rule 3 of Order XXXII, which speaks about appointment of a proper person to be ‘guardian’ in the suit for a minor defendant, does not require the ‘legal guardian’ (under the personal law of the minor) to be appointed as such. In any event, if the intention of the Legislature was to mandate that it is only the legal guardian of a minor who can represent him in a suit, it would be specifically enumerated in Order XXXII and there would not arise any necessity for the court to appoint a person to be guardian. However, sub-Rule (2) of Rule 3 requires merely that an application in the name and on behalf of the minor is to be made, subject to the restriction stipulated in sub-rule (3) that such application must be supported by an affidavit verifying the fact that the proposed guardian has no manner of interest adverse to the minor and is fit to be so appointed. Sub-Rule (4) requires notice of such application to be given to any guardian of the minor appointed and declared by an authority competent in that behalf and if there is no such guardian, upon notice to the father and in case of non-availability of the mother, to the mother etc.
- 36.** The further question which arises is whether Rule 3 would be applicable to the minor appellant.
- 37.** As rightly argued by learned counsel for the appellant, Rule 3 contemplates a situation where a minor is already a defendant in the suit. The expression used in sub-rule (1), which is relevant to the context, is “where the defendant is a minor...”. Thus, unless the minor is already a defendant in

the suit, there arises no scope of appointment of a guardian for the purpose of the suit.

- 38.** As such, in the present case, since the appellant, who is a minor, was not even a party to the suit and was impleaded on his own application as a defendant, there was no scope of appointment of a legal guardian before the appellant entered into the fray of the litigation. If Rule 3 were to be applicable to the appellant at the inception, the appellant would not be able to cross the threshold of being impleaded as a party to the suit, since an application had to be made to that effect, obviously, at a juncture when the appellant was not a party to the suit at all. As no application can be made in a suit except through a next friend, the only option open to the appellant was to be represented by a next friend even for the purpose of filing the application for addition of party. As per the regime envisaged under Order XXXII of the Code, the expanse of the term “next friend” is wide enough to accommodate any person of sound mind, who has attained majority, to be permitted may act as next friend of a minor or even his guardian for the purpose of the suit.
- 39.** Hence, since Rule 3 was not applicable to the minor at the relevant juncture, there was no scope of appointment of a legal guardian for the minor when the appellant entered into the periphery of the litigation.
- 40.** Seen from another perspective, Section 361 of Mulla's Principles of Mahomedan Law provides that a person may neither be a “legal guardian” nor a “guardian appointed by the court” but may have voluntarily placed himself (/herself) in charge of the person and property of a minor. Such a

person shall be called as *de facto* guardian, who would be merely a custodian of the person and property of the minor. Thus, even if the personal law of the appellant is to be considered for the purpose of representation in the suit, there is no fetter to anyone otherwise eligible acting as a *de facto* guardian if he/she voluntarily places herself in such position. The only fetter would be that such a person would not, under Section 364, have the power to transfer any right or interest to the immovable property of the minor.

- 41.** What is to be noted is that there is no restriction for a minor to be represented by a next friend for the purpose of acquiring a property, be it by a gift or a sale or by any other mode contemplated in the Transfer of Property Act, 1882. Thus, the argument of the respondent no.1 that the gift deed and the sale deed executed in favour of the minor, accepted on his behalf by his next friend/mother, were vitiated, cannot be accepted, since the mother could very well have acted as a *de facto* guardian under Section 361 of Mulla's Principles of Mahomedan Law for the purpose of acceptance of a property in behalf of a minor, as opposed to transferring a property which already belonged to the minor.
- 42.** Considered in appropriate legal perspective, thus, the minor appellant can very well be represented by his mother or, for that matter, by anyone else, provided such person is of sound mind, has attained majority and does not have any interest adverse to the minor in the suit. Since the mother of the appellant satisfies all the above criteria, there is no bar to the minor appellant being represented through his mother as his next friend.

- 43.** Another aspect of the matter is to be noted. By legal fiction, in a partition suit, due to the very nature of the litigation, all parties are in the position of plaintiffs, since a partition decree operates in favour of all parties thereto and any of the parties may levy execution of such decree. Looked at from such perspective, the principle embodied in Rule 1 of Order XXXII of the Code, in spirit, may also be applicable to a defendant, insofar as a partition suit is concerned.
- 44.** Thus, we do not find any illegality in the appellant being represented by his mother as next friend.
- 45.** Another important factor to be considered in the present case is that the appellant was impleaded as a party on an application made on his behalf by his next friend/mother, without any objection being raised to such application by the plaintiff/respondent no.1. Furthermore, no such objection was raised to the representation of the appellant by his mother, as next friend, even at the hearing of the injunction application filed in the Trial Court. Thus, the respondent no.1 cannot be permitted to raise such question for the first time in appeal.
- 46.** In *Abdul Samad (supra)*¹, the learned Single Judge of the Kerala High Court had correctly observed that the powers of a person accepted by the court as next friend of a minor plaintiff is only limited to that legal proceeding and not beyond. In the present case, not only did the Trial Court permit addition of the appellant through his mother as next friend, there was no demur or objection on the part of the plaintiff/respondent no.1 to such

¹ ***Abdul Samad v. Rasheedha and another*, reported at 2017 SCC OnLine Ker 5548**

addition. Moreover, no objection as to be maintainability of the injunction application at the behest of the appellant through his next friend/mother was also raised before the Trial Court.

- 47.** Accordingly, this issue is decided in favour of the appellant, holding that the representation of the appellant through his mother as next friend, in the suit as well as in connected applications and the present appeal, is legal and valid.

Whether the learned Trial Judge was justified in refusing to grant injunction on merits

- 48.** Insofar as the merits of the impugned order are concerned, the learned Trial Judge dismissed the temporary injunction application of the added defendant/appellant primarily on two premises. First, the court took into consideration the Commissioner's Report to hold that although construction materials had been accumulated on the suit property, no construction work was actually going on. The second premise of refusal was that the plaintiff/respondent no.1 has substantial share in the suit property as well as obtained required conversion and sanction building plan for construction. The respondent no.1 has also argued in this Court that substantial construction had already been undertaken by the plaintiff/respondent no.1, due to which the balance of convenience and inconvenience tilts in favour of refusal of injunction.
- 49.** However, none of the aforesaid premises are tenable, either in law or on the facts of the case.

- 50.** The learned Trial Judge proceeded in a perverse manner in refusing injunction on the premise that no construction is going on, despite having taken note of the specific observation of the learned Advocate Commissioner in his report to the effect that construction materials were found on the suit property, thereby indicating that there was imminent chance of construction being made thereon. Moreover, from the arguments of respondent no.1 as well as the stand taken by him, both before this Court and the Trial Court, it is evident that the respondent no.1 seeks to make construction on his chosen portion of the property based on the sanction plan obtained by him. The findings of the learned Trial Judge were mutually contradictory inasmuch as the learned Judge refused injunction on the one hand on the premise that no construction work was going on and on the other that the plaintiff has substantial share in the property and has already obtained conversion and sanction building plan, thus indicating that the plaintiff is entitled to make construction on the property.
- 51.** The mere fact of obtaining conversion and a sanction plan by the plaintiff at his own risk does not *per se* confer a right on the plaintiff to raise a construction on an admittedly joint property, by selecting a portion of the property for such construction according to his whims and choice, thereby seeking to tilt equities in his favour, since it is well-settled that while partitioning a property, the existing possession of parties is required to be honoured as much as possible. Once a construction is made, it is only in exceptional cases that the court directs it to be demolished at the stage of allocating shares at the time of final partition and it is the general norm that

if a party has already raised a construction on a part of the property and is using it, that portion is allocated to such party and, if it extends beyond such party's share, to compensate the other party by awarding owelty money. Thus, if the plaintiff/respondent no.1 is permitted to make the entire construction despite it being still a non-starter, it would be giving a premium to such endeavour on the part of the plaintiff. Rather, it is to avoid such consequences that courts are inclined to ensure that the subject property is maintained *in statu quo* during pendency of a partition suit. This is also to ensure that one party cannot steal a march over the other by selecting the best portion of the suit property and raising a permanent building thereon, thereby frustrating the rights of his co-sharers, who also have equal right, title and interest over every inch of the joint property.

- 52.** Even otherwise, the argument of the plaintiff/respondent no.1 that substantial construction has already been made is belied by the materials on record as well as the submissions of the plaintiff/respondent no.1 himself.
- 53.** It is admitted by the plaintiff, as also confirmed by the impugned order itself, that at least till September 2, 2025, that is, the date of filing of the Advocate Commissioner's report in the Trial Court, no construction had been made by the plaintiff, which was one of the premises for refusal of injunction. Neither did the plaintiff make any submission, nor did the learned Trial Judge record, that any construction had been made pursuant to the conversion and the sanction plan till the date of the impugned order.

- 54.** On January 14, 2026, this Court passed an injunction order in the appeal, restraining the plaintiff/respondent no.1 from altering the nature and character of the suit property and the existing possession. Precious nothing has been brought before the Court by the respondent no.1 to indicate that any construction has taken place in the brief period of 41 days which elapsed in-between the impugned order of the Trial Court and the order of this Court dated January 14, 2026. It is also otherwise not quite credible that within such short period, substantial construction has been made, particularly in view of the previous conduct of the plaintiff/respondent no.1 in sitting tight over the matter over a prolonged period from acquiring the property and even from obtaining conversion and a sanction plan for construction.
- 55.** The chronology of events is extremely important in this respect. In the written objection to the exception of the added defendant/appellant to the Advocate Commissioner's report in the Trial Court, the plaintiff/respondent no.1 categorically stated in Paragraph No.3 thereof that the plaintiff made a construction of one room "just after his acquiring title by purchase". According to the plaint, the suit property was purchased by the plaintiff by a sale deed dated May 2, 2013, registered on May 14, 2013. Hence, admittedly, the room found by the Advocate Commissioner on the suit property was constructed in the year 2013. Thus, the argument of learned senior counsel for respondent no.1 before us that the said room indicated that substantial construction had been made recently, is not acceptable, since such construction was made long back and is not contemporaneous,

which might still have furnished justification to the urgency for further construction to be done.

- 56.** Notably, despite having purchased the property as long back as in May, 2013, the permission to convert the property was obtained only on February 28, 2023, which is evident from the annexure at Page 8 of the affidavit-in-opposition filed by the respondent no.1 to CAN 1 of 2025. Again, from Page No.11 of the said opposition, it is found that the sanction for construction was obtained on March 28, 2023. Thus, the plaintiff, even on the basis of his own documents and pleadings, sat tight over the matter for almost a decade after purchasing the property before obtaining the conversion and sanction plan.
- 57.** Even after getting conversion and the sanction plan, the plaintiff/respondent no.1 waited for more than a year, without acting on the same by making any construction, and filed the present suit for partition on June 24, 2024. Thus, there is no pressing urgency for the plaintiff to raise a construction immediately now.
- 58.** Thus, the premise of having obtained conversion and a sanction plan, which was *inter alia* cited as a ground for refusal of injunction by the learned Trial Judge, was baseless.
- 59.** Merely having a “substantial share” in the property does not justify permitting one of the parties to a partition suit to make construction, since the endeavour of the court in a partition suit is to maintain the joint property *in statu quo* till the suit reaches its terminus.

- 60.** In any event, as per his gift deed and the purchase deed, the appellant also has equally substantial share in the property through the original defendant and is a co-sharer of the suit property in his own rights at present.
- 61.** Hence, there is no urgency at all, as evident from the conduct of the plaintiff himself, for him to raise a construction immediately on his chosen portion of the suit property after having waited for 13 long years from the date of his purchase and three years from obtaining conversion and sanction plan for construction on the suit property. Rather, in the event such construction is permitted during pendency of the suit, irreversible alterations may be effected to the suit property, thus subjecting the added defendant/appellant to irreparable injury.
- 62.** There might still have been justification for refusing injunction in the event the plaintiff could show that a substantial part of the construction is already raised and only the final touches thereto are required to be completed. However, since the construction is virtually a non-starter till now, a fresh construction ought not to be permitted on joint property by one of the parties as per his own choice.
- 63.** Accordingly, the balance of convenience and inconvenience squarely lies in favour of grant of injunction as prayed for by the added defendant/appellant.
- 64.** Another important aspect of the matter cannot also be overlooked. The affidavit-in-opposition of respondent no.1 to CAN 1 of 2025 does not contain any jurat portion. Thus, the averments made in the said opposition cannot be taken note of at all. As such, the averments made in the injunction

application, which support the case of the appellant for grant of injunction, ought to be accepted *modo et forma* by application of the doctrine of *non traverse*.

- 65.** However, even if the contents thereof are looked into, the documents annexed to the opposition, as discussed above, support the cause of the appellant and not the respondent no.1.
- 66.** In view of the above, the learned Trial Judge erred in law and in fact in refusing to grant injunction, by arriving at findings which are self-contradictory as well as contrary to the materials on record.
- 67.** Hence, FMA No.8 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order No.11 dated December 3, 2025 passed by the learned Civil Judge (Senior Division) at Kandi, District: Murshidabad in Partition Suit No. 258 of 2024, to the extent that the temporary injunction application filed by the added defendant/appellant on June 17, 2025 was rejected on contest. The said temporary injunction application is hereby allowed, restraining the plaintiff/respondent no.1 and his men and agents from changing the nature and character of the suit property in any manner and/or altering the present possession in respect of the suit property till disposal of the aforementioned suit.
- 68.** It is made clear, however, that the above findings are conclusive only for the present adjudication and are otherwise tentative in nature, arrived at for the limited purpose of deciding the present appeal, and the learned Trial Judge shall not be influenced unduly by the said observations while disposing of

the suit, which will be decided independently, in accordance with law and on its own merits.

69. CAN 1 of 2025 is consequentially disposed of.

70. There will be no order as to costs.

71. Urgent certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)