In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Sandip Kumar De

F.M.A. No. 813 of 2026
+
CAN 1 of 2026

With

F.M.A. No. 872 of 2026
+
CAN 1 of 2026

Analytical Management Consultants

-Versus-

Parikshit Agarwal and others

For the appellant	:	Mr. Sakya Sen, Sr. Adv., Mr. Sunil Gupta, Ms. Pallavi Chatterjee, ... Advs.
For the respondent nos. 1 & 2	:	Mr. Krishna Raj Thaker, Sr. Adv., Mr. Zeeshan Haque, Ms. Srijani Mukherjee, ... Advs.
Heard on	:	27.08.2026
Reserved on	:	27.08.2026
Judgment on	:	03.09.2026

Sabyasachi Bhattacharyya, J.:-

1. FMA No. 813 of 2026 has been filed against an *ex parte* ad interim order of injunction restraining the defendants and their men and agents from disturbing the peaceful possession of the plaintiffs/respondent nos. 1 and 2 over the suit property and from making any construction, alteration and demarcation over the suit property. The other appeal, bearing FMA No. 872 of 2026, has been preferred against an order extending the said ad interim order.

2. Since FMA No. 813 of 2026 assails the original reasoned order of *ex parte* ad interim injunction, which was merely extended mechanically by the order impugned in the other appeal, the former is taken up for adjudication on merits and the outcome thereof will govern the other appeal.

3. The impugned *ex parte* ad interim order of injunction was passed in a suit filed by the plaintiffs/respondent nos. 1 and 2 for declaration of their undivided share or interest in the suit property, for a declaration that the defendants do not have any right, title and interest over the same save and except the portions being used as common areas, amenities and facilities for any unsold flat of the project Fort Oasis, for perpetual injunction against the defendants from encroaching upon or disturbing the possession in respect of the suit property and/or from altering the boundary lines thereof, as well as for consequential reliefs.

4. The subject-matter of the suit is an open space connecting Premises Nos. 36B and 37, Panditiya Road, P.S. – Rabindra Sarobar, Kolkata – 700 029, described in the plaint as a driveway, along with the central lawn within the project Fort Oasis situated at Premise Nos. 36B and 37, Panditiya Road. Admittedly, the plaintiffs/respondent nos. 1 and 2 are owners of flats at Premises No. 36B, the defendant no. 1/appellant owns a flat at Premises No. 36A, whereas defendant no. 2/respondent is a lessee at Premises No. 37.

On the other hand, defendant nos. 3 to 20/respondent nos. 4 to 21 are owners at Premises No. 36B. Premises No. 37 was originally comprised of three premises, bearing nos. 37, 38 and 38/1, which were subsequently combined into the present Premises No. 37.

5. The first ground of challenge to the impugned order is that the suit property is beyond the property conveyed to the plaintiffs and their predecessor-in-interest by virtue of their respective deeds of conveyance. The plaintiffs, it is submitted by the appellant, are second purchasers. By neither of the deeds, either of the plaintiffs or their predecessor-in-interest, was the suit property conveyed to them.

6. Learned senior counsel for the appellant further argues that a sanction plan, although not a part of the plaint, was a part of the plaintiffs' purchase deed, which was referred to in the plaint. In the said sanction plan, the suit property is not reflected as a joint property, thus belying the plaint case.

7. By placing specific reliance on the Schedule of the purchase deed of the plaintiffs' vendor, it is pointed out that it does not include any driveway connecting Premises Nos. 36B and 37. All the common areas and facilities conferred by the said deed are confined to Premises Nos. 36B and 37 and do not extend to the common passage or Premises No. 36A.

8. It is further pointed out that no interconnection between Premises Nos. 36B, 36A and 37 is indicated in the plaintiffs' vendor's deed dated September 28, 2012 as well.

9. Although it is alleged that a common developer is constructing a project on Premises Nos. 36B, 37 and 36A, separate sanction plans were obtained in respect of each premises and the developer is not a party to the suit. Thus, there is no common thread between the three properties, evident from the title deeds of the plaintiffs or their vendor and/or the sanction plan accompanying the plaintiffs' deed.

10. Learned senior counsel appearing for the appellant next argues that although in Paragraph No. 4 of the plaint and in the deeds of the plaintiffs and their vendor, there is a reference to an agreement of January 5, 2006 as a basis of the rights claimed over the suit property, such agreement was not produced before the learned Trial Judge at all, nor has been furnished before this Court. Moreover, the said agreement, even if any, culminated in and was superseded by the subsequent purchase deeds in favour of the plaintiffs and their vendors, which do not confer any title over any driveway, which is the suit property. Thus, the existence of a prior agreement does not, in any manner, independently constitute a transfer of any right over the suit property, having merged in the subsequent purchase deeds which do not confer any such right. Moreover, the appellant was not a party to the agreement and is, thus, not bound by the same. That apart, it is argued that although the agreement was mentioned in the recital of the plaintiffs' vendor's deed, it was not a part of the habendum clause thereof. By citing *Union of India representing South Eastern Railway v. Amarendra Nath Sarkara,* reported at *AIR 1967 Cal 119*, it is argued that the operative clause in a deed prevails over its recitals.

11. In any event, no such agreement was referred to in the plaintiffs' title deed.

12. It is pointed out by the appellant that the plaintiffs claim "undivided share", and not easementary rights, in the suit property, but have not established any such rights from the deeds executed in favour of the plaintiffs and/or their vendor.

13. It is next contended that the impugned order is devoid of reasons. The learned Trial Judge, although merely narrated in a nutshell the case of the plaintiffs, undertook no comparison between the deeds of the plaintiffs and their vendors and the plaint schedule, nor was the sanction plan looked into. By citing *Bloomberg Television Production Services India Private Limited and others v. Zee Entertainment Enterprises Limited*, reported at *(2025) 1 SCC 741*, it is submitted that if an order of injunction is unreasoned, the same amounts to perversity, arbitrariness and capriciousness, which entitles the Appellate Court to set aside the same.

14. From Paragraph No. 4 of the plaint, it is submitted, it will be evident that although other premises were a part of a "larger project" asserted by the plaintiffs, Premises No. 36A, where the appellant is the owner of one of the flats, is not a part of the project even as per the plaint.

15. Again, in Paragraph No. 6 of the plaint, it has been asserted that the suit passage is a part of such "larger project", despite the same not being claimed to exclusively belong to either the plaintiffs or their vendors, as per their deeds.

16. In Paragraph No. 15 and Prayer (c) of the plaint, it has been categorically alleged that the defendant has encroached upon the suit property, without any proof of the plaintiffs' title over the suit property, which was a foundational fact in order to obtain injunction on the ground of encroachment.

17. Lastly, it is argued that the plaintiffs have failed to produce any document in support of their possession in respect of the suit property.

18. Learned senior counsel for the plaintiffs/respondent nos. 1 and 2, in reply, argues that the possession of the plaintiffs is admitted in Paragraph No. 25 of the stay application filed by the defendant no. 1/appellant in the present appeal. Read in conjunction with the assertion of such possession in Paragraph No. 17 of the plaint, there cannot be any manner of doubt that the plaintiffs are undisputedly in possession over the suit driveway.

19. Secondly, the appellant does not claim any title to the suit driveway or central lawn and therefore cannot be aggrieved by the impugned order in any manner.

20. Thirdly, it is argued by the plaintiffs/respondent nos. 1 and 2 that the defendants have been categorically alleged to be a part of the Fort Group, in Paragraph Nos. 2 and 4 of the plaint. The commonality of the project, which unifies all the premises in question, and the agreement within the Fort Group relating to the project, have been categorically averred in the plaint and, at the ad interim stage, the learned trial Judge was only to go by the plaint and the injunction application and the documents relied on therein.

21. Learned senior counsel further argues that the agreement dated January 5, 2006 was categorically made a part of the parent deed of the plaintiffs' vendors. Also, there was incorporation by reference of the agreement for sale dated September 23, 2009, which included the plaintiffs' rights over the suit driveway and central lawn, into the sale deed of the plaintiffs and their vendors.

22. In the plaintiffs' deed, all common rights appurtenant to the transferred properties were also conveyed, thus including the suit property.

23. Learned senior counsel next contends that the photographic evidence and the Google maps which were produced before the learned trial Judge were specifically referred to in the impugned order and formed a basis of the same. From the said photographs and maps, it would be evident that the suit driveway is situated within the plaintiffs' property at Premises No. 36B.

24. Lastly, learned senior counsel appearing for the plaintiffs/respondents relies on *Ramakant Ambalal Choksi v. Harish Ambalal Choksi and others*, reported at *(2024) 11 SCC 351*, for the proposition that the Appellate Court can only interfere with an injunction order under Order XLIII of the Code of Civil Procedure (for short, "the Code") under stringent conditions, the test and emphasis being more on perversity rather than a mere error of fact or law. Since such tests are not met in the present case, it is submitted that the appeal ought to be dismissed.

25. Upon hearing learned counsel for the parties, it transpires that a thorough scrutiny of the deeds of the plaintiffs and their vendor is required to be undertaken to understand the true purport of the property and rights conveyed to the plaintiffs, even at a *prima facie* stage, which we proceed to undertake.

26. The agreement for sale dated September 23, 2009, which culminated in the title deed in favour of the plaintiffs' vendor, is a part of the records.

27. In Clauses 'J' and 'K' of the said agreement, it is acknowledged that the then owners were absolutely ceased and possessed of Premises No. 36B, which was contiguous to Municipal Premises No. 38/1 (subsequently merged into Premises No. 37) as well as Premises No. 36A, the latter being then under a lease for a period of 99 years with the present appellant.

28. In Clause 'L' thereof, it was mentioned that M/s. Fort Builders, which was developing the property, and Analytical Management Consultants Private Limited (for short, "the AMC"), that is, the present defendant no. 1/appellant, were also undertaking development of their respective premises, which were contiguous to each other, in pursuance of an agreement dated January 5, 2006 entered into between the owner/developer, namely, Fort Builders and the appellant, wherein it had been agreed that several of the facilities will remain common for all the buildings to be constructed on the said properties at Premises Nos. 36B, 38/1 and 36A, Panditiya Road, belonging to the owners, Fort Builders and AMC respectively.

29. Even in the plaint, it has been categorically alleged that the defendant no. 1/appellant is a part of the Fort Group, which is undertaking a "larger project" involving Premises Nos. 36A, 36B and 37 and the areas in-between. In the agreement dated September 23, 2009, Article VIII, pertaining to "Recreation Center", mentioned that the owner/developer and the lessees/developer of Municipal Premises Nos. 36A and 38/1, Panditiya Road, had agreed among themselves to provide some of the facilities which were to remain common for all the owners/occupiers of the various flats/units and apartments forming part of the said building *as well as the building and/or buildings to be constructed at Premises Nos. 36B, 36A and 38/1, Panditiya Road*, as more particularly mentioned in the Seventh Schedule thereunder written. In the preamble of the Seventh Schedule, it was mentioned that such facilities, which were provided under the tripartite agreement executed between the seller along with the owner/lessees of Municipal Premises Nos. 36A and 36B, shall remain common for all the owners and/or occupiers of the various flats/units and apartments forming part of the said building as well as the building/buildings constructed at Premises Nos. 36B, 36A and 38/1, Panditiya Road.

30. Clauses (v), (vi) and (vii) of the Seventh Schedule included all passage ways and common paths, which would remain common and/or for common use between the owners and occupiers of various flats/units forming part of the said building as well as the buildings to be constructed at Premises No. 38/1, 36A and 36B, Panditiya Road. Similarly, any other part or portions which may form part of the said building as well as the building/buildings to be constructed at the aforesaid three premises would necessarily be for the common use and enjoyment by the owners and occupiers of various flats/units of all the said buildings. Moreover, all the above-mentioned facilities and such other facilities which may be provided by the seller along with other owner/lessee of the Premises Nos. 36A and 38/1 were to remain common for all the owners and/or occupiers of the various flats of all three buildings.

31. Although the appellant was not a signatory to the said agreement, the Fort Projects Private Limited itself, of which the appellant was a part, was a party and signatory thereto. Read in conjunction with the averments in the plaint and injunction application that the defendants formed a part of the same Fort Group, which is developing all the properties-in-question, the said ingredients clearly indicate that the appellant was complicit in the agreement to provide common passageways and driveways between all the buildings, including Premises Nos. 36A, 36B and 37.

32. The Deed of Conveyance dated September 28, 2012, executed in favour of the vendors of the plaintiffs/respondent nos. 1 and 2, mentioned in Clause 'E' of the recital thereto that the purchaser companies, with an intention to develop the premises, entered into an agreement dated July 26, 2002 with Fort Projects Private Limited, the developer. Building plans and a road widening scheme were also enumerated in Clauses 'G' and 'H' thereof. In Clause 'K' of the recital of the said deed, it was categorically mentioned that the premises-in-question is contiguous to municipal Premises Nos. 37, 38 and 38/1 (subsequently conglomerated into Premises No. 37), which was being developed by the M/s. Fort Builders, and also contiguous to Municipal Premises No. 36A, which is presently under a lease of 99 years with AMC (present appellant). Clause 'A' of the deed stipulated that the Fort Builders and AMC are also undertaking development of their respective premises in pursuance of an agreement dated January 5, 2006 entered into between the owner/developers, Fort Builders and AMC, wherein it had been agreed that several of the facilities will remain common for all the buildings to be constructed on the properties mentioned therein, including Premises No. 36A, Panditiya Road.

33. In such context, the habendum clause of the deed mentioned that the property conveyed was more fully described in the Second Schedule and also included the right to use and enjoy in common by the owners and occupiers of other units and spaces at the building complex in common parts thereof, more fully described in the Third Schedule. Conspicuously, in Clause (u) of the habendum part of the said deed of the plaintiffs' vendors, it was categorically mentioned that the terms, conditions, clauses, schedules and other obligations and rights of the agreement for sale dated September 23, 2009 (referred to above) shall apply thereto.

34. Thus, there cannot be a shade of doubt that all provisions enumerated in the said agreement for sale were incorporated categorically as a part of the deed of sale executed in favour of the plaintiffs' vendors.

35. Seen thus, the common areas and facilities mentioned in the Third Schedule of the said deed would be inclusive of the rights as envisaged in the aforesaid agreement for sale.

36. Coming to the Deed of Conveyance dated September 24, 2020 executed in favour of the present plaintiffs/respondents, we find reference in one of the recital clauses therein to the agreement dated January 5, 2006 entered into between Fort Builders and AMC, the defendant no. 1/appellant herein, also referring to the facilities which would remain common for the properties at Premises Nos. 36B, 37, 38, 38/1 and 36A.

37. Again, the Second Schedule of the said deed was referred to as describing fully and particularly the common areas and facilities and the undivided proportionate share of land comprised in the premises as contemplated under the said deed.

38. In the habendum clause thereof, it was reiterated that the premises attributable thereto were fully described in the Second Schedule and included the right to use and enjoy in common with the owners and other occupiers of other units and spaces at the building complex the common parts, areas, facilities and amenities at the building complex. However, it was not restricted to the said building alone, which is evidenced by the further provision in the habendum clause that the Third Schedule was also incorporated in the conveyance, which refers to "former and other" rights, privileges, easement and benefits whatsoever "belonging or in any way appertaining thereto or usually held or enjoyed therewith and reputed to belong to or be appurtenant thereto and reversion or reversions, remainder or remainders, together with all easements or quasi-easements or other stipulations or provisions for the beneficial use and enjoyment of the said unit, as mentioned in Part-I of the Fifth Schedule". Thus, the language employed in the habendum clause is of the widest import, not merely confined to the common rights and privileges in the building which was being conveyed but also including "former and other" rights appertaining thereto and "reputed to belong or be appurtenant" thereto and "all easements, quasi-easements" etc. for the beneficial use and enjoyment of the said unit.

39. In the Second Schedule, the description of the property conveyed, apart from the residential flat at Premises No. 36B itself, also takes within its fold all common parts, portions, areas and facilities, together with the undivided proportionate share in the land comprised in the said premises "attributable thereto". The common areas and facilities in the Third Schedule include driveways as well.

40. Thus, in the absence of any specific clause in the deed of conveyance executed in favour of the plaintiffs as to their vendors retaining the rights conferred in the vendor's purchase deed and in view of the wide language used in the plaintiffs' deed, all common areas and facilities, including driveways, appertaining to or reputed to be appurtenant to the subject-matter of the conveyance or attributable thereto would come within the purview of the conveyance.

41. Part-II of the Fifth Schedule of the plaintiffs' deed specifically enumerates the easements reserved by the vendors. Conspicuously, the right to the suit property is not mentioned in such exclusion clause, thus strengthening the presumption that the conveyance in favour of the plaintiffs included whatever their vendors had obtained through their own purchase deed, including, by specific incorporation the preceding agreement for sale, all rights and privileges to the common spaces lying in-between Premises Nos. 36A, 36B and 37, which includes the suit property.

42. The proposition laid down in *Amarendra Nath Sarkara (supra)*[1] is that the operative clause of a deed prevails over recitals thereof, if there is no ambiguity in the operative part. In the present case, out of the operative part, as incorporated in the habendum clause and the Schedules to the plaintiffs' deed, clearly reflect, as discussed above, that all the rights of the plaintiffs' vendor, apart from those reserved under Part-II of the Fifth Schedule, were conveyed to the plaintiffs by their vendor. Such common rights, areas and facilities is also borne out by the purchase deed of the plaintiffs' vendor which, by incorporative the preceding agreement for sale, also included rights over common passages and driveways between the three premises, including the suit property.

43. At best, the defendant no. 1/appellant could have argued that there is ambiguity in the operative part, which would then, by dint of the proposition laid down in *Amarendra Nath Sarkara (supra)*[2], compel the Court to look into the recitals of the deed, which categorically refers to the agreement dated January 5, 2006, which has been repeatedly referred to in all the relevant deeds and agreements to have been entered into between the Fort Builders and the present appellant.

44. We must not overlook the fact that the agreement entered into by the Fort Builders (the developer) and the appellant could only be in the custody of either of them and not the plaintiffs/respondents nos. 1 and 2/subsequent purchasers. Hence, since specific reliance was placed by the plaintiffs on

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[1] ***Union of India representing South Eastern Railway v. Amarendra Nath Sarkara,*** **reported at *AIR 1967 Cal 119***

[2] ***Union of India representing South Eastern Railway v. Amarendra Nath Sarkara,*** **reported at *AIR 1967 Cal 119***

such agreement, it is the incumbent duty of the defendant no. 1/appellant, an alleged signatory to the agreement, which document, *inter alia*, holds the key to the dispute, to produce the same at an appropriate stage before the trial Court.

45. However, at the *ex parte* ad interim stage, it is only the averments made on oath in the plaint and the injunction application and the documents referred to and relied on therein which can be looked into by the concerned Court, which was precisely done by the learned trial Judge.

46. Insofar as the plaintiffs' possession is concerned, Paragraph No. 17 of the plaint categorically asserts such possession. It is well-settled that at the *ex parte* ad interim stage, the plaint averments have to be taken as sacrosanct and if the same disclose sufficient cause of action for injunction, it is to be granted.

47. Therefore, even without looking into the admission of the appellant in its stay application (Paragraph No. 25) as to the plaintiffs being in possession of the suit property, the learned trial Judge was justified in coming to the *prima facie* conclusion that the plaintiffs are in possession of the suit property.

48. The learned trial Judge also referred to the photographic evidence which is placed before us and clearly show the existence of the driveway which, *prima facie*, appears to be within Premises No. 36B or at least, not within Premises No. 36A. The said passage lies exactly in-between the two premises, being butted by boundary walls (whether temporary or permanent) on both sides. Even if we go by the *prima facie* presumption raised by the materials before us that the said passage cannot be conclusively said to be contained within Premises No. 36B, fact remains that we cannot also say that it is a part of Premises No. 36A, being clearly demarcated by a boundary-wall along the borders of Premises No. 36A, where the defendant no. 1 is owner of a flat.

49. From a perusal of the impugned order, we find that the learned trial Judge adverted to and narrated the gist of the plaint case and also relied on the materials placed before the said Court, including the photographic evidence. Thus, the tests laid down in *Bloomberg Television (supra)*[3], as well as *Ramakant Ambalal Choksi (supra)*[4] in respect of interference by an Appellate Court are not met, since the findings of the Trial Court are neither perverse nor unreasoned. It is trite law that at the stage of grant of *ex parte* ad interim injunction, the trial court has to be satisfied only on the foundational ingredients for grant of injunction having been made out, and not hold a mini trial. Even if the reasons attributed by the trial Court while passing such order are not sufficient in the view of the Appellate Court, the latter can always supply further reasons if it concurs with the conclusion of the trial Court.

50. Thus, in view of the reasons given above, this Court is of the opinion that the learned trial Judge acted within the periphery of law and adverted to relevant materials and pleadings on oath to come to its conclusions and pass the impugned *ex parte* ad interim order.

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[3] ***Bloomberg Television Production Services India Private Limited and others v. Zee Entertainment Enterprises Limited, reported at (2025) 1 SCC 741***

[4] ***Ramakant Ambalal Choksi v. Harish Ambalal Choksi and others, reported at (2024) 11 SCC 351***

51. Hence, F.M.A. No. 813 of 2026 is dismissed on contest, thereby affirming the impugned order, bearing Order No. 2 dated May 16, 2026, passed by the learned Civil Judge (Senior Division), Ninth Court at Alipore, District – South 24 Parganas, in Title Suit No. 698 of 2026.

52. Accordingly, F.M.A. No. 872 of 2026, preferred against orders extending the initial *ex parte* ad interim order, which we have already affirmed, is also dismissed on contest, thereby affirming the orders dated June 8, 2026 and June 16, 2026, passed by the learned Civil Judge (Senior Division), Ninth Court at Alipore, District – South 24 Parganas, in Title Suit No. 698 of 2026.

53. The two connected applications in both the appeals, bearing CAN 1 of 2026, are consequentially disposed of as well.

54. There will be no order as to costs.

55. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)