HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA

AND

THE HON'BLE JUSTICE SANDIP KUMAR DE

FMA 916 OF 2025
With
CAN 2 of 2020
With
CAN 3 of 2021
With
CAN 4 of 2026

Alok Niwas Private Limited
Vs
Debasish Pal and Ors.

For the appellant:	Mr. Indranil Ray, Sr. Adv., Mr. Sanjoy Mukherjee, Adv., Mr. Suvradal Chowdhury, Adv.
For the respondent nos. 1 & 2.:	Mr. Kushal Chatterjee, Adv, Mr. Tauhid Khan, Adv, Mr. Atanu Haldar, Adv.
Last heard on:	27.08.2026
Judgement on:	03.09.2026

SANDIP KUMAR DE, J.:

1. The present appeal has been filed against the judgment and order dated October 3, 2019 passed by the learned Civil Judge (Senior Division), 1st Court at Howrah in connection with an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure in Title Suit No.187 of 2019. By the order impugned the learned trial court had rejected the application for temporary injunction filed by the plaintiff.

2. The plaint case is that the plaintiff purchased several plots to construct and set up an industrial park situate at the scheduled properties mentioned in Part 1 of the schedule of the plaint. For such purpose, the plaintiff purchased several plots of land from defendant Nos.6 to 26 ("the Pal family" for short). The plaintiff entered into an oral agreement with the defendant No.1, the respondent No.1 herein, to the effect that the defendant No.1 shall convey the total area of 3.8680 acres of land, both demarcated as well as undivided in favour of the plaintiff for an agreed consideration of Rs.6,88,22,217/-. Out of the said area, the partitioned area of 151.46 decimals of land held by defendant No.1 exclusively, shall be conveyed subject of reciprocal obligations. In that case, the plaintiff would convey to the defendant No.1 65.640 decimals of land in several plots within Mouza Bipannapara, JL No.27, P.S Domjur, District Howrah upon payment of consideration of Rs. 1.24 crore. Upon such transfer of 65.640 decimals of land, the defendant No.1 would convey and transfer 6.540 decimals of land in several plots both in Mouza Mohiary totaling 53.99 decimals

demarcated along with undivided 1/2nd share in different areas at Mouza Bipannapara and Mouza Mohiary totaling 11.65 decimals for consideration of Rs.1.46 crores. Upon such mutual transfer of land, the defendant No.1 would then convey and transfer all partitioned and demarcated land held by the defendant No.1 in several plots described in paragraph No.4(c) (iii) of the plaint in favour of the plaintiff at an agreed consideration of Rs.3,36,88,554/-. It was further agreed between the plaintiff and defendant No.1 and that upon conveying the said area of 65.64 decimals of land the plaintiff would facilitate development of the said land and would also provide electricity and drainage installations. It was also agreed that while conveying 65.64 decimals of land, the plaintiff would also permit usage of company passage of the defendant No.1 to enable him to ingress and egress to and from the said 65.640 decimals of land. On the basis of the said oral agreement, the defendant No.1 executed five several deeds of conveyances in favour of the plaintiff company totaling to 2.2543 acres of land consisting of both his undivided share as well as his exclusive area including his proportionate right in the common passage. Meanwhile, defendant Nos.6 to 32 also executed several conveyances on various dates in respect of both divided and undivided portion of the property including the undivided share of common passage in favour of the plaintiff. The plaintiff also discharged his reciprocal obligations by executing and registering a deed of conveyance for 65.640 decimals of land in favour of defendant No.1 on 1st November, 2015.

3. The further plaint case is that despite the plaintiff discharging its reciprocal obligation, the defendant No.1 delayed discharging his

reciprocal obligation in terms of the said agreement as also execution of registration of the conveyance in respect of 151.46 decimals of land on several pretexts. The plaintiff called upon the defendant No.1 to transfer the said plot of land as agreed upon to be transferred in favour of the plaintiff by a letter dated 23rd September,2016 and subsequently, by reminders dated 15th February,2017 and 2nd November,2017. The plaint case further states that the plaintiff has started construction of setting up the industrial park upon obtaining permission from various authorities and due to non-performance of his part of the agreement by the defendant No.1 the plaintiff is suffering as the project of setting up the industrial park is not being completed. The plaintiff prayed for a decree for specific performance for transfer of suit property with a direction upon the defendant No.1 to register and execute the sale deed in favour of the plaint upon acceptance of the agreed consideration of Rs.3,36,88,544/- within time limit to be specified by the learned trial court, in the alternative for a prayer of decree for damages of Rs.127 crore, enquiry in terms of order 20 Rule 12 of the Civil Procedure Code, decree for permanent injunction restraining defendant No.1 from changing the nature and character of the suit property till disposal of the suit and restraining them from restricting free ingress and egress of the plaintiff from the common entrance and National Highway 6 to the suit property as also to the plots of land owned by the plaintiff along with the ancillary reliefs.

4. The plaintiff/appellant also filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure before the learned trial court praying for an order of injunction restraining the

defendant Nos.1 and 2 and their men, agents or servants from changing the nature and character of the suit property making any construction thereon and restricting free ingress and egress of the plaintiff from the common entrance of National Highway 6 of the suit property as also the plots of land owned by the plaintiff, restraining the defendant Nos.1and 2 and their men, agents and servants from creating any nuisance on the common passage regarding the suit property and the plots of all lands to the plaintiff and from parking vehicles on such passage and not creating any obstruction in any manner whatsoever on the common passage leading to the suit property and all the plots of land of the plaintiff, restraining the defendant Nos.1 and 2 from alienating, transferring, encumbering and/or creating any third party right in respect of the suit property and ad-interim prayers in terms thereof.

5. Defendant No.1 filed written objection against the application for temporary injunction filed by the plaintiff. In the written objection, the defendant No.1 denied the material allegations made by the plaintiff in the said application. The defendant No.1 flatly denied that there was any agreement dated 7th May,2013 by and between the plaintiff and the defendant No.1 and the defendant No.1 further stated that he never responded to the letters referred to by the plaintiff. According to defendant No.1, the said letters were unilaterally written by the plaintiff. The defendant No.1 clearly denied that he either agreed to sale the suit property or entered into any oral agreement with the plaintiff regarding the arrangements as mentioned in the plaint. The defendant No.2 filed a separate written objection and the plaintiff filed rejoinder to both the written objections before the learned trial court. Upon hearing, the

Learned Trial Court rejected the temporary injunction application on contest. Hence, the instant appeal.

6. Learned senior counsel appearing for the plaintiff/appellant referred to the arrangements and/or reciprocal obligations allegedly entered into by the plaintiff and the defendant No.1. By virtue of the oral agreement dated 7th May,2013 and narrating the complaint and on consideration of the fact regarding the setting up of the industrial park by the plaintiff, it was submitted that the schedule of the plaint very well included the plot numbers as well as the easement and quasi easement rights together with all rights, liberties, privileges along with right to free ingress and egress. It was submitted that the plaintiff, at all material times, has been ready and willing to perform the obligation and/or reciprocal obligation being part of the oral agreement dated 7th May,2013 entered into between the plaintiff and defendant No.1. It was further submitted that the plaintiff filed the suit when no commercial construction was there in the plots of land. Referring to Annexure B of the list of documents annexed to the plaint being the sketch map, the learned senior counsel pointed out that save and except a portion of land being the subject matter of the present suit, the rest of the entire area has been purchased by the plaintiff and the construction work for setting up the industrial part is continuing. The learned senior counsel for the plaintiff/appellant further referred to the deed of conveyance dated 5th November,2015 executed between the defendant No.1 and the plaintiff wherein it was recorded in the recital of the said deed that the entire common passage originating from the public road ending with the vendor's land, i.e., the land belonging to the defendant No.1 shall be developed at the cost of

the second party i.e., the plaintiff. The first party is not under any obligation to pay any charges or fees for such development and/or improvement of common road meant for usage of both the parties. The first party purchaser will cooperate with the second party in all respect and at the time of development of land belonging to the plaintiff personally or through the authorized representatives or agents. The learned senior counsel further referred to the condition recorded in the said deed to the effect that the purchaser above named i.e., the plaintiff, declared and confirmed that the vendor i.e., the defendant No.1 has sold "the said plot of land" in favour of the purchaser. By this deed the vendor herein shall have the first option to purchase at the highest market price and/or acquire the same. Referring to the said condition, the learned senior counsel submitted that the conditions mentioned in the said deed of conveyance clearly show that there was an oral agreement entered into by and between the plaintiff and the defendant No.1. The learned senior counsel then referred to the letter 23rd September,2016 being Annexure F to the plaint. The said letter was written by the plaintiff to the defendant No.1 by which it was recorded that the defendant No.1 had agreed to sale his other property situated at Mouza Bippanapara, JL No.27 and Mouza Mohiary, JL No. 28 P.S Domjur, District Howrah to the plaintiff. The said letter further recorded that in part performance of the agreement, the defendant No.1 transferred and conveyed in favour of the plaintiff, land measuring about 170.907 decimals being undivided 1/7th share in the joint property as stated in the said letter. Thereafter, on 1st November, 2015, the defendant No.1 transferred and conveyed a part or portion of the divided and demarcated portion of land together with 1/7th undivided

share in the common passage alone together measuring about 65.640 decimals at Mauja Mohari, JL No.28 and 8.11 decimals in Mauja Bipannapara, JL No. 27 leaving a balance of 156.229 decimals. It was observed by the defendant No.1 that the remaining portions of land measuring 150.229 decimals shall be transferred and conveyed as soon as the sale and transfer of land by other co-owners who has also agreed to sale their rest undivided share in the said land as well as their divided and demarcated plots together with each of their undivided share that the common passage is completed. In the said letter it was requested that the defendant may consider that the plaintiff has acquired right, title and interest of co-owner in order to complete the process and further considering the situation that the plaintiff has already invested a large sum of money, the defendant was requested to transfer remaining 150.229 Decimals of plot of land in favour of the plaintiff. Subsequently, the reminders dated 15th February,2017 and 2ndNovember, 2017 were also sent to the defendant No.1 by the plaintiff.

7. Learned senior counsel for the plaintiff/appellant further referred to the development agreement dated 12th July,2016 between the plaintiff and the defendant No.4 i.e., the developer who developed the industrial park. Referring to Article 10 Clause 9.1 of the said development agreement, the learned senior counsel argued that the entire project is scheduled to be completed in phases.

8. Learned senior counsel for the plaintiff/appellant further referred to the application for injunction. The learned senior counsel referred to

paragraph 29 of the application for temporary injunction wherein the performance of bhumi puja on the suit property of defendant Nos.1and 2 for the purpose of starting construction in the property has been shown as the cause of urgency. The learned senior counsel further referred to the prayers of the application for injunction and submitted that at that time there was no construction in the suit property.

9. The learned senior counsel for the plaintiff/appellant then referred to the written objection to the application for injunction by the defendant No.11. Referring to paragraphs 9, 11 and the written objection and the letter addressed to Block Land and Land Reforms Officer,Domjur,Howrah jointly by the plaintiff and the defendant No.1 on 15th November,2017, the learned senior counsel for the plaintiff/appellant argued that the oral agreement or the acceptance of terms and conditions thereof have not been denied by the defendant No.1 and as it appears from the conduct of the defendant No.1, the specific response to the letters written to the defendant No.1 by the plaintiff seeking specific performance of the oral agreement was not required.

10. Learned senior counsel for the plaintiff/appellant next referred to the judgment and order impugned in the present appeal and submitted that the recording of the learned trial judge that the plaintiff is willing to purchase a piece of land measuring 151.46 decimals which is referred to as suit property is not correct factually because easementary rights which were very much part of the schedule of the plaint, was not included such recording. It would further appear from the recording of

the trial judge that the common passage referred to in the schedule and shown in Annexure B is not the suit property but the reference to the boundary of the suit property only is factually wrong and as such, the learned trial judge committed a material irregularity. Therefore, the recording of the learned trial judge with regard to the common passage not being part and parcel of the suit property is absolutely wrong which led to the decision under challenge. Referring to the findings of the learned trial judge with regard to the applicability of Section 10 of the Indian Contract Act, 1872 with regard to the oral agreement, the understanding of the provision as well as the ratio laid down in the cited decision reported in the case of Aloka Bose Vs. Parmatma Devi & Ors. (2009) 2 SCC 582 by the plaintiff, the learned trial judge fell in error as he misconstrued both the statutory provision as well as the ratio laid down in the cited decision in the context of the present case. The learned senior counsel further submitted that the learned trial judge fell in further error because there was no whisper with regard payment of stamp duty in respect of the oral agreement and payment of stamp duty in case of oral agreement is patently absurd. Therefore, the finding of the learned trial judge with regard to the prima facie case is palpably misconceived and perverse.

11. Learned senior counsel submitted that the Learned Trial Judge further fell in error in recording that the learned trial judge could not find any documentary evidence in relation to the oral agreement. The learned senior counsel for the plaintiff/appellant further submitted that only the absence of date of oral agreement in the letter dated 23rd September,2016 and subsequent reminders thereof

cannot brush aside the existence of oral agreement which is otherwise clear from the conduct of the parties. He further submitted that the question raised with regard to the inclusion of defendant No.1 in the same drive at the instance of the proforma defendant No.5 was not argued by the parties at all. He further submitted that the learned trial judge recorded that in the letter dated 23rd September,2016 it was mentioned the oral agreement was referred to but the date, place and occasion of such agreement was disbelieved by the learned trial judge. Therefore, the parties agreed and contracted on the basis of oral agreement was not considered by the learned trial court.

12. With regard to the written objection of defendant No.2, i.e., the developer, the learned senior counsel for the plaintiff/appellant referred to the written objection of defendant No.2 and submitted that the construction made by the defendant No.2 upon getting physical possession of the property from defendant No.1 and upon execution of the unregistered development agreement on 1st December,2015 between the defendant nos.1 and 2 are versions of the defendant No.2 which has no bearing in respect of the conduct of the plaintiff and the defendant No.1 in connection with the oral agreement. He further referred to the order dated 7th April,2026 passed by this Hon'ble Court in the present appeal by which this Court restrained the defendants/respondent Nos.1and 2 and their men and agents by an order of injunction from making any construction on the common passage as described in paragraph No.3 of the plaint leading to the suit property from that date till disposal of the injunction application filed in the present appeal. He further submitted that this Court was satisfied

that there was prima facie case made out by the plaintiff/appellant in the present case.

13. As such, the learned senior counsel for the plaintiff appellant prayed for setting aside of the judgment and order impugned and further prayed for allowing the appeal by restraining the defendant Nos.1 and 2 from creating any further disturbances in the suit property till the disposal of the suit.

14. Per contra, the learned counsel for the Defendant/respondent No.1 submitted that while seeking injunction, a case has to be strongly based on existence of facts and not on presumptions. Referring to paragraph 4 of the plaint, the learned counsel for the defendant/respondent No.1 submitted that the purchase of plot of land from Pal family took place on or about 25th February,2013 whereas the oral agreement has purportedly and/or allegedly being entered into on May 7,2013. The learned counsel for the defendant/respondent No.1 submitted that the case of oral agreement has been made out in such a manner that the same is brought within the contours of deeds or instruments executed between the parties. He further submitted that the question of concessional price as recorded in the recitals of the deed came up because the defendant No.1 was the middleman in respect of the execution of the deeds of conveyance amongst the parties. He further referred to the deed of conveyance dated November 1,2015 executed by the defendant No.1 as vendor in favour of the plaintiff as the purchaser and submitted that there is no reference to the oral agreement as being stated in the plaint. He further referred to the valuation made in respect

of the said deed and submitted that market value of the property had been almost the same as accessed by the Directorate of Registration and Stamp Revenue and the amount mentioned in the memo of consideration. As such, there is no question of any concessional price as sought to be made in the plaint case.

15. Learned Counsel appearing for Defendant No.1/Respondent No.1 submitted that in case of oral agreement, strongest possible case with regard to the existence of oral agreement is required to be made out. In this regard the Learned counsel places reliance on paragraph 4 of the plaint and submitted that oral agreement is dependent on reciprocal obligations. However, no such indication appears from the deeds of conveyances referred to in the plaint forming the case of oral agreement. The Learned Counsel placed the Deed of Conveyances dated November 1,2015 by which the defendant/respondent No.1 purchased the piece and parcel of land measuring about 65.64 decimals in different Dag numbers within Mouza Bipannapara JL No.27. The Learned Counsel further placed the memo of consideration of the said deed of conveyances and pointing out the consideration amount of Rs1.24 crore, he submitted that the said price was not concessional price. He further submitted that the price written in the memo of consideration is Rs.1.24 crore and the government valuation is Rs.1,24,88,667/- . Thus, difference is not much and the transaction took place on the basis of market value only. He further pointed out the recital of the deed of conveyances wherein it is recorded “that in the premises aforesaid and in pursuance of the said agreement and in consideration of a sum of Rs.1,24,00,000/- only duly paid to the vendor by the purchaser on this date of execution of this

deed". It was submitted that the term "said agreement" is not oral agreement and there has to be an agreement in writing before that deed is executed. The learned counsel for the defendant/respondent No.1 then placed another deed dated November 1, 2015, i.e., on the same date where the defendant/respondent No.1 as vendor transferred the piece and parcel of land at Mouza Mohiary, both demarcated and undemarcated, measuring about 65.64 decimals for a consideration of Rupees 1.46 crores. Referring to the said deed of conveyance, the learned Counsel submitted that the transaction took place on the basis of an independent proposal upon verification of the market value. There is no oral agreement connected to the said deed of conveyance and there is no concessional price and the transaction took place on the basis of agreed price based on market value.

16. Referring to the deed of conveyance dated 25th April 2014, wherein the defendant /respondent No.1 being the vendor transferred in favour of the plaintiff /appellant the piece and parcel of land measuring about 62.787 decimals in Mouza Bipannapara for a valuable consideration of Rs.75,97,200/- , the learned Counsel referred to the recital of the said deed wherein it was recorded that due to urgency of money the vendor has agreed to sell the said property.Basis the same, the learned counsel for the defendant/respondent No.1 argued that the said transaction took place due to want of money and the same was not in pursuance of an oral agreement.

17. The learned counsel next referred to the letters and communications from the record. Placing reliance on letter dated 23rd September 2016 written

by the plaintiff/ appellant to the defendant/respondent No.1, the Learned Counsel for defendant/Respondent No.1 argued that the said letter was written after 3 years from the date of purported oral agreement. In terms of the purported oral agreement, the reciprocal obligations ended after two years from the date of the said oral agreement and the letter dated 23rdSeptember 2016 was communicated after a period of more than one year from the date of cessation of reciprocal obligations under the purported oral agreement. He further argued that in the plaint, there was no reference to the deed dated 25th April 2014, although the same found place in the later dated 23rdSeptember 2016. He further argued that although in the letter, a reference to altered position or altered agreement has been mentioned but there is no prayer in the plaint with regard to such altered position or altered agreement. He submitted that from the contents and purport of the said letter, it appears that it was merely a desire of the plaintiff/ appellant to purchase 150.229 decimals of land with another 65.64 decimals of land aggregating to total 215.869 Decimals of land as was expressed in the said letter dated 23rd September 2016, but there was nor oral agreement between the parties to that effect. The learned counsel for the defendant/respondent No.1 further argued that non-reply to the said letter did not amount to acceptance or existence of any concluded contract. Non-denial would not amount to agreeing to the terms or contracting between the parties. He further submitted that the contents of the said letter dated 23rd September,2016 does not contain any reference to a deed or oral agreement but contains only a vague reference to commitment. He further submitted that reminders to the said letter dated 15th February 2017 and 2nd November 2017 also did not have any reference to any oral agreement.

18. The Learned Counsel for the defendant/respondent No.1 then referred to the agreement dated 12th July,2016 entered by and between the plaintiff/appellant and the developers. Referring to clause 4.2 under the heading "Parties and Object of this Agreement" of the said agreement dated 12th July,2016, the Learned Counsel submitted that in the language of the clause with regard to inclusion of lands in the industrial park, use of the word 'may' clearly shows that the plaintiff/appellant was not sure about acquisition and/or purchase of further land in respect of setting up the industrial park and it was only intention of the plaintiff/ appellant which would be derived from the said clause. Referring to clause 9.1 under the heading 'construction and completion' of the said agreement, the Learned counsel further submitted that the clause clearly shows that the setting up of the industrial park would be on the basis of phasewise acquisition and/or purchase of land and such acquisition and/or purchase would be independent deals based on considerations. Such acquisition shows that there was no mention of any oral agreement.

19. The Learned Counsel for the defendant/ respondent No.1 then referred to the letter dated 15th November,2017 jointly written by the plaintiff /appellant and the defendant/respondent No.1 addressed to the Block Land and Land Reforms Officer, Domjur Block, District Howrah by which the parties made a clarification with regard to the mutation of various plots of land. Referring to the contents of the said letter, the learned counsel argued that both the parties sat together for the purpose of mutation only and there was no other purpose mentioned in the said

letter with regard the said sitting. It further appears that the said sitting took place in 2017 only.

20. The Learned counsel for defendant/respondent No.1 then referred to the map wherefrom it would appear that the plot belongs to respondent /defendant no.1 and gate also belongs to him. It is a matter of greed of the plaintiff /appellant to grab the land and indulge the defendant /respondent no.1 in litigation in order to bring him to the terms of the plaintiff/ appellant.

21. With regard to the common passage, the learned counsel for defendant/ respondent No.1 next argued that it would be evident from the prayer (a) of the injunction application that the suit property belongs to defendant/respondent No.1 and he is in possession of the same. So, such a prayer to have and/or secure access to defendant/ respondent No.1's property cannot be granted as prayer by the plaintiff/appellant. Such prayer was nothing but a relief at the interim stage sought to be obtained in circuitous manner which really amounts to final relief. He further submitted that the passage is a common passage leading to the construction gate and both the parties park their vehicles in the common passage. There is nothing to show from the pleadings that the defendant/respondent No.1 is creating nuisance by parking his vehicles.

21. Referring to paragraph 14 of the plaint, the learned Counsel for the defendant/respondent No.1 next submitted that statement regarding the agreement between the parties on 3rd August 2017 to the effect that the

defendant would complete the full performance of the contract within a period of two years, is a unilateral statement made in the plaint and that is nothing more than intention of the parties,but there was no oral agreement to that effect. He further submitted that although such purported agreement has been mentioned in the plaint, there was no reference to that agreement dated 3rd August 2017 in the reminder letter dated 2nd November 2017. He further submitted that as there was no agreement, the statement with regard to reciprocal obligations as made in paragraph 16 of the plaint does not and cannot arise.

22. He further submitted although there is a statement with regard to novation of the contract and/or a new contract dated 3rd August 2017 in paragraph 27 of the plaint, such case has not been pleaded anywhere in the plaint.

23. With regard to the cause of action of the plaint, the learned counsel for the defendant/respondent No.1 submitted that paragraph 29 of the plaint discloses the cause of action wherein it has been mentioned that on 23rdSeptember,2016 the defendant No.1 refused to convey the suit property in favour of the plaintiff as per the purported oral agreement and subsequently changed agreement dated 3rd August 2017. Such statement is ex-facie absurd because if the defendant /respondent No.1 has refused to transfer the land in favour of the plaintiff on 23rdSeptember,2016, there would not have been any question of reminders subsequent thereto as mentioned in the said paragraph 29 of the plaint. He further submitted that none of the letters dated 23rd September 2016, 15thFebruary 2017 and 2nd November,2017 record

any refusal on the part of the defendant/respondent No.1. Therefore, the statement of the plaint and content of the letters are different. In the circumstances, the presumption of non- response as sought to be raised by the plaintiff's appellant is immaterial.

24. The learned counsel for the defendant/respondent No.1 then submitted that the industrial park sought to be set up by the plaintiff/appellant is a commercial project. In a commercial venture, waiting for a period of about three years to seek relief is fatal and such delay defeats equity since the execution of the deeds of conveyances took place in November 2015 and the plaintiff/ appellant waited till April 2019 to file the suit.There is nothing to show from record that between such period, the plaintiff/appellant approached the defendant No.1 with regard to the subject matter.

25. The defendant /respondent No.1 then referred to the prayers of the plaint, esp., prayer (b) of the plaint and submitted that such prayer has been made with regard to specific performance for transfer of suit property and such specific performance is based on the oral agreement according to the plaintiff but the said prayer does not have any reference to the oral agreement. Lastly, he submitted that no mutuality between the parties could be shown from the deed of conveyance as sought to be argued by the plaintiff/ appellant.

26. The learned counsel for the defendant/ respondent No.1 submitted that the matter is with regard to a commercial project and as such, the suit ought to have been filed in Commercial Court and the ordinary civil

court could not have entertained the suit having lack of inherent jurisdiction.

27. In support of his submission, learned counsel for the defendant/ respondent No.1 placed reliance on a decision of the Hon'ble Supreme Court of India in the case of Brij Mohan & Ors. Vs. Sugar Begum & Ors.(1990)4 SCC 147. Referring to para 2 of the said report, it was pointed out that the said case was with regard to oral contract and further referring to paragraph 16 of the said report, it was pointed out that in that case, although it was found that there was a meeting between parties but that does not establish that there was a concluded contract between the parties on that day because admittedly defendant No.1 was not present at that point of time. Referring to paragraph 20 of the said report, it was submitted that in case where the plaintiff is seeking decree of specific performance of contract of sale of immovable property on the basis of oral agreement alone, heavy burden lies on the plaintiff to prove that there was consensus ad idem between the parties for a concluded oral agreement for sale of immovable property. Whether there was such concluded oral agreement would be a question of fact to determine in the facts and circumstances of each individual case. It has to be established by the plaintiff that vital and fundamental terms of sale of immovable property were concluded between the parties. A written agreement, if any, to be executed subsequently would be a fundamental agreement incorporating such terms which had already been settled and concluded in the oral agreement.

28. The learned counsel for the defendant/ respondent No.1 then relied upon a decision of the Hon'ble Supreme Court of India in the case of Shivaji Yallappa Patil Vs.Ranajeet Appasaheb Patil & Ors. (2018)16 SCC 725.Relying on paragraph 16 of the said report, the learned counsel for defendant /respondent No.1 argued that since the plaintiff pleaded part performance of the contract, such pleading attracts section 53A of the Transfer of Property Act,1882 and in case of suit for specific performance of contract based on part performance, the essential ingredients and sine qua non for making out a claim under section 53A of the Transfer of Property Act,1882 have been recorded in the said paragraph of the said report. From the conditions sine qua non for claiming part performance, the conditions laid down in the said report have not been specified by the plaintiff/appellant.Although the plaintiff pleaded part performance in the plaint, the conditions including the written agreement as laid down in the said decision as sine qua non is absent.

29. The learned counsel for the defendant/respondent No.1 then placed reliance on a decision of the Hon'ble Supreme Court in the case of Ambalal Sarabhai Enterprises Ltd. Vs.KS Infraspace LLP Ltd.& Anr. (2020)5 SCC 410 and relying on paragraphs 5,7,15,17 and 21 of the said report, the learned counsel argued that in commercial dealings with high stake matters, delay is vital which took place in the instant case also. To seek a temporary injunction in a suit for specific performance a strong prima facie case on the basis of undisputed facts are required to be made out which is also absent in the instant case. There was no mutuality between the parties much less that they were ad idem as in the present

case and the existence of concluded contract between the parties is a matter of trial, in the instant case, is required to be borne into at the time of trial. In the cited decision, there were correspondences which formed the contract whereas in the case at hand, only a letter recording reference to oral agreement without any acceptance has been pleaded as document towards oral agreement.

30. The learned counsel for the defendant/respondent No.1 then relied upon a division bench decision of this court reported in the case of Ramen Roy Vs.Samriddhi Real Estate Pvt. Ltd. & Ors. 2026 SCC Online Cal 7528 And relying on paragraph 53 of the said report, the learned counsel for the defendant/ respondent No.1 argued that in case of commercial matters, the ordinary civil court lack jurisdiction with regard to subject matter and due to inherent lack of jurisdiction, the ordinary civil court cannot take up the matter. In the instant case, the matter being commercial in nature, the learned court being the ordinary civil court could not have entertained the suit at all.

31. In reply, the learned senior counsel for the plaintiff/appellant referred to para 29 of the injunction application and submitted that performance of Bhumi Puja was shown as the cause of action and/or urgency to move the application for injunction. Referring to the map appearing at page 89 of the IA/CAN 3 of 2021, the learned senior counsel submitted that it would appear from the said map, that the plot of land belonging to the defendant No.1 is landlocked. Only due to the transfer of land measuring about 65.64 decimals in favour of defendant No.1 by the plaintiff and in exchange, purchase of plot of same size of defendant

No.1 by the plaintiff, the land presently belonging to the defendant No.1 measuring about 151.96 decimals wherein the defendant No.1 has been setting up a garment haat, would get access to the said plot. The execution of the deeds on the same day shows mutuality between the parties. From the said map,he further pointed out that ingress and egress to and from NH 6 through a wide road and then leading to smaller road on the left hand side gives access to the landlocked piece of land belonging to defendant No.1 is the subject matter of suit and it is not the narrow road only, as sought to be pointed out by the defendant/respondent No.1. Referring to page 63 of IA/CAN 3 of 2021, the learned senior counsel for the plaintiff/ appellant pointed out that the deeds were executed as a matter of exchange so that the defendant No.1 can have access to his 151.96 decimals of landlocked plot wherein he has been constructing the haat although construction of such hut is not on record. However, at this juncture, it was pointed out that in the affidavit-of-opposition to IA/CAN 3 of 2021, the defendant/respondent No.1 has pleaded that construction of the haat is complete and the same is in operation.

32. Referring to the deeds both dated 1st November 2015, the learned senior counsel for the plaintiff /appellant then submitted that in the deed where the defendant no.1 is vendor it is recorded that on the basis of 'agreed terms' the deed has been executed whereas in the deed where the plaintiff is vendor it is recorded that it is on the basis of "highest available market price". The learned senior counsel for the plaintiff/appellant submitted that it is pertinent to note that in both the

deeds, the size of land had been the the same and the exchange of land was made on the same date.

33. Referring to paragraphs 4(iv),(v) and (vi) of the plaint, the learned senior counsel submitted that it was "agreed between the parties" as pleaded in the plaint. He further referred to paragraph 14 of the plaint where it was also mentioned that the parties 'agreed' with regard to completion of full performance of the contract. He further submitted that for the plot of land measuring about 65.64 decimals of land, another suit is pending between the parties and an appeal arising out of injunction matter is also pending. He further submitted that there was no novation of contract as sought to be pleaded by defendant/respondent No.1 but all the deeds were to be executed together as per the agreed terms.It is further submitted that the development agreement was executed with a third party and there was no requirement of mentioning of any oral agreement and it was kept open.

34. Distinguishing the judgments as cited by the learned counsel for the defendant/respondent No.1, the learned counsel for the plaintiff/appellant submitted that in Brij Mohan(Supra), the facts and circumstances of the case was different as the matter was decided after a complete trial which is not the case at hand as the matter arises out of the order passed at the stage of grant of injunction. With regard to Shivaji Yallappa Patil(Supra), the condition laid down by the Hon'ble Supreme Court included element of possession which is absent in the present case, and as such, Section 53A of 1882 Act cannot come into play in the instant case. With regard to Ambalal Sarabhai(Supra), he submitted that the case

is factually different from the present one and exchange of emails were considered to be the contract which is not the case at present. The said case was also decided after a complete trial which is not the case at present. With regard to Ramen Roy(Supra), the learned senior counsel for the plaintiff /appellant submitted that the present suit is not a commercial suit and it is with regard to specific performance for purchase of 'Sali' land. The deeds do not refer to any industrial park. It is also not related to any development agreement and the suit is for decree of specific performance simpliciter. Therefore,the ratio of the said decision is not applicable in the present case.

35. In the circumstances, the learned senior counsel for the plaintiff/appellant prayed for setting aside of the judgment and order in impugned and prayed for allowing the appeal by passing appropriate order granting ingress and egress to and from the said property by the plaintiff/appellant. The learned counsel for the defendant/respondent No.1 submitted that the order impugned passed by the Learned Trial Judge was justified and he prayed for dismissal of the instant appeal.

36. Heard the learned counsel for the respective parties at length and considered the materials on record. The preliminary question comes to fore for decision is that whether the suit was a commercial suit or not. In case it is found that the suit is not a commercial suit, then comes the next question as to whether the Learned Trial Judge was justified in refusing injunction in favour of the plaintiff/appellant as prayed for.

37. In this context, it is profitable to refer to Section 2(c) of the Commercial Court Act,2015. The said statutory provision defined "commercial dispute" which are as follows:

"(c) "commercial dispute" means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce;

(viii) franchising agreements;

(ix) distribution and licensing agreements;

(x) management and consultancy agreements;

(xi) joint venture agreements;

(xii) shareholders agreements;

(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(xiv) mercantile agency and mercantile usage;

(xv) partnership agreements;

(xvi) technology development agreements;

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

(xviii) agreements for sale of goods or provision of services;

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) insurance and re-insurance;

(xxi) contracts of agency relating to any of the above; and

(xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;"

The prayers of the plaint read as follows:

(a) Leave under Order II Rule 2 of the Code of Civil Procedure, 1908;

(b) Decree for specific performance for transfer of the suit property as described in the Schedule hereunder with a direction to the defendant No.1 to execute and register the sale deed in favour of the plaintiff on accepting the agreed consideration being a sum of Rs.3,36,88,544/-;

(c) A Decree directing the defendant No.1 to execute and register the sale deed in respect of the suit property within a time as to this Learned Court may deem fit and proper, failing which the sale deed be executed and registered according to the provisions of Order XXIX Rule 34(5) and Rule 6(a) of the Code of Civil Procedure, 1908;

(d) Alternatively, a decree for damages for Rs.127 crores as pleaded in paragraph 20 hereof;

(e) In the further alternative, an enquiry be caused in terms of Order XX Rule 12 of the Code of Civil Procedure, 1908 to ascertain the actual amount of damages sustained by the plaintiff and a decree be passed accordingly;

(f) A decree for permanent injunction restraining the defendant No.1 from changing the nature and character of the suit property till the disposal of the instant suit;

(g) A Decree of permanent injunction restraining the defendant No.1 and 2 and/or their men, agents or servants from changing the nature and character of the suit property, making any construction thereon and restricting free ingress and egress of the plaintiff from the common entrance on National Highway-6 to the suit property as also the plots of land owned by the plaintiff;

(h) A Decree of permanent injunction restraining the defendant No.1 and 2 and/or their men, agents or servants from creating any nuisance on the common passage leading to the suit property and the plots of land of the plaintiff and from parking vehicles on such passage and creating any obstruction in any manner whatsoever on the common passage leading to the suit property and the plots of land of the plaintiff;

(i) A decree for permanent injunction restraining the defendant nos.1 and 2 from alienating, transferring, encumbering and/or creating third party rights in respect of the suit property;

(j) Receiver;

(k) Injunction;

(l)(1) Attachment;

(m) Costs;

(n) Further and other reliefs;

On a conjoint reading of the aforesaid provision and the prayers of the plaint, it appears that the plaint and the injunction application do not fulfil any of the conditions laid down in the aforesaid definitions contained in Section 2(c)of the Commercial Courts Act,2015. On a careful reading of the plaint and the injunction application, it further appears that the plaint contains prayers relating to decree for specific performance to transfer the suit property described in the schedule alongwith ancillary reliefs. The case of the plaintiff further disclosed that the development agreement has been entered by and between the plaintiff with a third party, a developer, to develop the property purchased by the plaintiff and the same is not related to the defendant No.1. Thus, at the relevant juncture, the subject property of the agreement in question was not used exclusively in trade or commerce. Therefore, the suit is not a commercial suit and a suit for specific performance to transfer the suit property.

38. As such, the present suit is very well maintainable in the ordinary Civil Court and not before the Commercial Court. As such, the ratio decidendi of Ramen Roy(Supra) would not be applicable in the facts of the present case.

39. Since the suit is not a commercial suit and is maintainable in ordinary civil court, now the second question is required to be gone into whether the Learned Trial Judge was justified in refusing to grant injunction ion favour of the plaintiff.

40. On a careful reading of the judgment and order impugned dated October 3,2019 passed by the Learned Trial Judge it appears that the Learned Trial Judge recorded that it is undisputed that the plaintiff is willing to purchase the suit property and further, the defendant had orally agreed to sell the said property. Learned Trial Judge further recorded that the suit property is in possession of the defendant No.1. However, Learned Trial Judge further recorded that the common passage is not the suit property. Learned Trial Judge recorded the finding that he did not find any payment of stamp duty. The Learned Trial Judge further recorded that he did not find any documentary evidence regarding existence of oral agreement. The Learned Trial Judge further recorded that he found no date or place of oral agreement in the letter dated September 23,2016. The Learned Trial Judge raised question as to why the developer did not include the defendant No.1 in the development agreement. The Learned Trial Judge further found that since the plaintiff has prayed for alternative relief of compensation or damages of Rs.127 Crore, the plaintiff is not entitled to get an order of injunction as prayed for. Therefore, the Learned Trial Judge held that none of the three conditions for grant of injunction, viz., (i)Prima facie case; (ii) Balance of convenience; and(iii) irreparable loss and injury are in favour of the plaintiff are in favour of the plaintiff and rejected the payer for temporary injunction on contest.

41. It is apparent from the text of the judgment and order impugned that the Learned Trial Judge found that the case of the plaintiff is that the plaintiff is willing to purchase the suit property and further, the

defendant had orally agreed to sell the said property. In such a case, the plaintiff had very well made out a prima facie case to go for trial and was very well entitled to an order of injunction. From the conduct of the parties, as evident from the deeds of conveyances executed between them, it is clear that the parties were at consensus ad idem regarding the transfer of plots of land by way of exchange.

42. The findings of the Learned Trial Judge regarding the common passage being outside the suit property is contrary to the material on record in as much as the same is, as being evident from the plaint and the schedule appended to it, within the schedule of property in suit.

43. Further, the finding of the Learned Trial Judge regarding applicability of the Stamp Act in case of oral agreement is patently absurd and beyond comprehension of a person of ordinary prudence. We fail to understand how an oral agreement could be stamped and in what manner. It was also nobody's case that the developer should include the defendant No.1 in the development agreement. The existence of the oral agreement has been disbelieved merely because there is no date and place mentioned regarding the same in the letter dated September 23,2016 although such question requires trial on evidence. The deeds of conveyances constituted a triable issue for the purpose of grant of injunction and there was no contemporaneous objection to the letters of the plaintiff by the defendant No.1.The Learned Trial Judge could not appreciate the real meaning and purpose of Section 10 of the Indian Contract Act,1872 and the judgment of Aloka Bose(Supra) in its true perspective. Oral agreement is not barred under Section 10 of the Indian Contract

Act,1872 and the suit for specific performance in respect of oral agreement is not barred. Existence of oral agreement is apparent from the conduct of the parties as has been found by the Learned Trial Judge himself in the judgment and order impugned.

44. Lastly, the finding of the Learned Trial Judge regarding the alternative prayer for damages for refusing the prayer for temporary injunction is misdirected, perverse and contrary to law. An alternative prayer cannot be a bar to seek temporary injunction.

45. We respectfully agree with the ratio decidendi of the decisions cited before us. However, the decision in Brij Mohan(Supra) was delivered after a complete trial and such is not the case here as it was at the stage of temporary injunction. Therefore, the said decision is distinguishable in the fact situation. In the decision of Shivaji Yallappa Patil(Supra), the conditions sine qua non for part performance included the element of possession which is not the case here and as such, the same differs on facts. The case of Ambala Sarabhai if factually different as in the said cited decision, exchange of emails were considered as concluded contract and the same is not the case at hand. Lastly, the case of Ramen Roy(Supra) would not be applicable in the present case as the present case is maintainable before the ordinary civil court and it is not a commercial suit, as we have already held in the earlier paragraphs of this judgment.

46. We find that by order dated April 7,2026, a coordinate Bench presided over by one of us (Sabyasachi Bhattacharyya,J.) considered the matter is

detail and admitted the appeal. By the said order, the respondents No.1 and 2 and/or their men and agents were restrained by an order of injunction from making any construction on the common passage as described in paragraph 3 of the plaint leading to the subject property from tat date till the disposal of the present appeal. The respondents No.1 and 2 and/or their men and agents were also restrained from creating any hindrance to the ingress and egress of the plaintiff/appellant in respect of the suit property over the common passage till disposal of the injunction application.

47. In the circumstances and in the light of the discussions made above, the appeal being FMA 916 of 2019 is allowed on contest, thereby setting aside the judgment and order impugned dated October 3,2019 passed by Learned Civil Judge (Senior Division)1st Court, Howrah. The Defendants/respondents No.1 and 2 are hereby restrained from changing the nature and character of the suit property and making any further construction thereon and from alienating, transferring, encumbering and/or creating any third party interest in the suit property and from restricting free ingress and egress through the common passage from National Highway 6 to the suit property as also the plots of land owned by the plaintiff and from creating any nuisance and /or obstruction and /or parking vehicles on the common passage leading to the suit property till the disposal of the suit.

48. The interim order granted on April 7,2026 is confirmed and modified to the extent as indicated above.

49. Since the suit is of 2019, we request the learned Trial Court to hear and dispose of the suit expeditiously, preferably within a period of one year from the date of this judgment without granting unnecessary adjournment to any of the parties.

50. CAN 2 of 2020, CAN 3 of 2021 and CAN 4 of 2026 are, accordingly, disposed of.

51. No order as to costs.

52. Urgent Photostat certified copy of this order/judgment if applied for, be supplied to the parties upon compliance with all requisite formalities.

I Agree. **(SANDIP KUMAR DE, J.)**

(SABYASACHI BHATTACHARYYA, J.)