

Misc. Appeal No. 02 of 2026

(Present: Shri A. Mukhopadhyay, Ld. ASJ, Mekhliganj, CoochBehar)

Order No. 04

Dated 10.08.2026:

Today, the record is taken up and the same is fixed for further hearing of the petition filed by the appellant u/s 5 of the Limitation Act, in terms of admission of the instant Misc. Appeal.

Today, the appellant files the document in support of contention of the prayer made for condonation of delay, in terms of the medical document under going treatment, in terms of firisti.

Heard the Ld. Lawyer for the appellant.

Considering the explanation of delay, prayed to have been condoned beyond the statutory period, on the ground of suffering from physical ailment supported by the documents of medical treatment, the delay is hereby condoned and it is,

ORDERED

that the prayer made by the appellant, in terms of petition filed u/s **5 of the Limitation Act**, is hereby allowed condoning the delay, in filing the instant Misc. Appeal, beyond the statutory period against the impugned order dated 10.02.2026 passed by the Ld. Civil Judge (Jr. Division), Mekhliganj, hereinafter called the 'Ld. Trial Court', passed in connection with Title Suit No. 14 of 2026.

Accordingly, the instant Misc. Appeal is admitted.

Perused the petition filed by the appellant under Or. 39 R 1 & 2 r/w section 151 of CPC with the prayer for ad-interim injunction in aid of temporary injunction against the respondents, on the ground as stated therein, along with the documents, submitted and relied upon in terms of firisti.

Heard the Ld. Lawyer for the appellant over the prayer for ad-interim injunction.

Considered.

It is the specific case and submission, made by the Ld. Lawyer for the appellant that the entire suit property, as delineated in schedule 'A' property to the plaintiff as well as the injunction application was the undivided and unpartitioned property belonging to the original owner Late Ramashray Singh and undivided portion of the said suit land was transferred by way of selling to his brother in law for his personal use, with the verbal agreement to transfer the same to it's original legal heir and following the same, subsequent in the year 2011, the said purchaser/ brother in law transferred the same back to Hena Singh, being the mother of the

present appellant as well as Arundhuti Singh, the daughter of the said original owner and subsequently, Hena Singh, the wife of said Ramashray Singh, this is the land specified under schedule 'B' property and since the demise of the said Ramashray Singh, who died intested, the entire schedule 'A & B' property, become the joined ejmali property amongst the surviving legal heirs but the present plaintiff/ appellant after passing away of his father, incurred and made the construction of their home located in the schedule 'A' property for comfortable living of his mother and other family members and portion of the same under schedule 'A' property was transferred into a tea garden.

It is the specific case of the plaintiff/ appellant that by passage of time, his mother Hena Singh, widow of late Ramashray Singh became ill and taking advantage of the physical ailment of the said Hena Singh, the mother of the parties, the defendant no. 1, and other local miscreants are trying to sale the said unpartitioned and joined undivided property having the share in every inches of all the legal heirs of the said original owner Ramashray Singh, being the parties to the suit and to that effect the mother of the plaintiff has also filed the complaint before the O/C, Mekhliganj PS dated 18.06.2018.

The Ld. Lawyer also pointed out the documents of possession over the property in terms of RoR and other documents as well and therefore, has come up with the prayer for injunction restraining the defendant no. 1 and for transferring or incumbering any portion of the said suit property as mentioned in the schedule and in the plaint as well as injunction application and the Ld. Lawyer further submitted that the disclosing of the prayer for ad-interim injunction by the 'impugned order', of the Ld. Trial Court having heard the prima-facie case in favour of the plaintiff/ appellant but refused to grant any ad-interim injunction, in terms of equitable relief, without giving an opportunity of being heard by both the parties to the said Title Suit No. 14 of 2026 and therefore, has come up with the instant prayer for ad-interim in aid temporary injunction as set forth in the petition filed along with the instant appeal under Or. 39 R 1 & 2 r/w section 151 of CPC vide petition dated 12.05.2026.

Considered.

On perusal of the documents filed and relied upon by the appellant/ plaintiff, at this stage, and having gone through the observation made in the impugned order by the Ld. Trial Court of holding 'prima-facie case' to go for trial, having not considered the 'urgency' as prayed for, this Court opines that in the admitted context of undivided and unpartitioned suit property, where, every co-sharer having their respective share in every inch of said undivided joined property, unless any intended/ apprehended alienation/ encumbrances, by way of any sale/ transfer, or

agreement for sale, or any mode of conveyance, whatsoever is not prohibited, the entire purpose of the institution of suit, as well as the instant appeal may be frustrated.

Hence,

It is,

ORDERED

that both the parties are hereby directed to maintain '*status-quo*' in respect of their **respective possession** over the suit property in question, and are hereby restrained from alienating/ encumbering any portion of the suit property, in question, by way of sale/ transfer/ agreement for sale or any recognized mode of conveyance, whatsoever recognized in law, till 15.09.2026, in terms of this **ad-interim order of injunction**.

Issue notice upon the respondent accordingly as to why the prayer for temporary injunction shall not be allowed against them, within 15 days from the date of receipt of the notice/ summons.

Appellant is directed to comply the provision of Or. 39 R 3 (a & b) of CPC, and to file requisite in this regard, at once.

Accordingly, fix 15.09.2026 for appearance and S/R.

Dictated & Corrected by me

Sd/-

Additional District Judge
Mekhliganj, CoochBehar

Sd/-

Additional District Judge
Mekhliganj, CoochBehar