

West Bengal form No. 3702

HIGH COURT FORM No. (J) 3

HEADING OF JUDGEMENT OF APPEAL

District : South 24 Parganas

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
15TH COURT, ALIPORE, SOUTH 24 PARGANAS.**

Present : **Shri Anindya Banerjee,**

(J.O. Code : WB00868)

Friday, the 10th day of July, 2026

MISC. APPEAL No. 96 OF 2018

(CIS No. 96/2018)

CNR No.WBSP01-006900-2018

From the appeal it is directed against the Order dated 21.04.2018 passed by Ld. Civil Judge (Junior Division), 6th Court, Alipore, South 24 Parganas (hereinafter mentioned as Ld. Trial Court) made in Title Suit No.13 of 2018.

Cabrini Bagwalla (Appellant/Defendant No.2)

Vs.

1. Gita Saha
2. Manoj Saha
3. Nita Biswas
4. Nisa Jaiswal
5. Shaym Sundar Saha
6. Kashinath Saha
7. Indubala Saha
8. Dilip Saha
9. Surojit Pathak
10. Sadique Zia

(...Respondents)

(...Proforma Respondents)

This appeal coming for hearing on 12.05.2026 and 22.06.2026 in the presence of

Md. Aqib Badr and Sobhan Gani Advocate(s) for Appellant(s)

Tinku Roy ChowdhuryAdvocate(s) for Respondent(s)

and having stood for consideration to this day the court delivered the following.

J U D G E M E N T

This appeal is directed against the Order dated 21.04.2018 passed by Ld. Civil Judge (Junior Division), 6th Court, Alipore, South 24 Parganas (hereinafter mentioned as Ld. Trial Court) made in Title Suit No.13 of 2018.

Along with the plaint, plaintiffs (being respondent Nos. 1 to 8 herein) filed an application U/O 39 Rule 1 & 2 read with Section 151 of Civil Procedure Code against Proforma Respondent No. 9 and the appellant, which was allowed after a contested hearing and both the parties were directed to maintain status quo in respect of the nature, character, possession and alienation of the suit property (schedule A and B) till disposal of the suit by the impugned order.

Being aggrieved by and dissatisfied with the said Order dated 21.04.2018 passed by Ld. Civil Judge (Junior Division), 6th Court, Alipore, South 24 Parganas made in Title Suit No. 13 of 2018 appellant/ defendant No.2 had filed the instant appeal on the grounds as mentioned in the memorandum of appeal.

After filing of the instant appeal before the Ld. District Judge, notice was served upon the respondents. Order sheet reveals that the Ld. Lawyer for the respondent appeared before the Ld. District Judge on 19.06.2018 and thereafter the case was transferred before this Court. Both the parties appeared before this Court but subsequently on 13.05.2025 the respondents were directed to show cause since they took no steps. Accordingly, by order dated 19.06.2025 the case was fixed for exparte hearing.

Points for determination or consideration

Is the impugned Order dated 21.04.2018 passed by Ld. Civil Judge (Junior Division), 6th Court, Alipore, South 24 Parganas made in Title Suit No.13 of 2018 liable to be set aside on the grounds mentioned in the memorandum of appeal ?

DECISION WITH REASONS

The brief facts of the case is that respondent No. 1 to 8 being plaintiffs filed T.S. No. 13 of 2018 against the proforma respondent No. 9 and the appellant herein praying for declaration of title in respect of the suit property mentioned in schedule A and Schedule B of the plaint and also a decree of declaration that the defendants have no right, title and interest over the said property. In the injunction petition, the plaintiffs prayed for a temporary injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs over the suit property.

The plaintiff's claim was that Brindaban Chandra Saha had purchased several properties including the suit property through auction sale in Bengal Land Revenue case no. 79/1952-53 on 28.03.1953 and he got possession of those properties. That said Brindaban Chandra Saha bequeathed his entire property by a Registered Will to his four sons Ganesh Chandra Saha, Sambhunath Saha, Shyam Sundar Saha and Kashinath Saha and his nephew Subal Chandra Saha. That the said Will was duly probated. The plaintiffs claimed to have inherited the suit property from their predecessor-in-interest Brindaban Chandra Saha. According to the plaintiffs defendants have no title or interest over the suit property.

The defendant No.2 (appellant herein) filed written objection against the injunction petition and asserted that one John Haris was the absolute owner of the property at premises No. 43, Ekbalpore Road, Alipore (mentioned in schedule A of the plaint as well as the injunction petition) and the appellant along with her mother, brother and sister acquired the schedule A property in the manner laid down in paragraph 6 of the written objection.

The specific case of the appellant is that the plaintiffs failed to produce any Sale Certificate in support of their claim that Brindaban Chandra Saha acquired title over the suit property through Revenue Sale

Case No. 79/1952-53. They have also failed to prove their possession over the suit property by filing any cogent documents. Moreover, my attention was also drawn to paragraph 8 of the plaint where the plaintiffs claimed that the suit property was situated at 4, Bhukailash Road, whereas the property mentioned in schedule A and schedule B of the plaint as well as injunction petition was premises No. 43 and 44, Ekbalpore Road, Kolkata-700 023. The appellant claimed that the plaintiffs had no nexus with the property mentioned in the schedule 'A' and accordingly they cannot claim any injunction over the said property which is owned and possessed by the appellant.

From the available materials I could not find any document in support of the plaintiffs' claim of Title and possession over the property mentioned in schedule A and schedule B of the plaint as well as injunction petition. In fact, the Ld. Civil Judge observed at page 5 of the impugned order that there was no scope at that stage to believe the claim of the plaintiffs or that of the defendants regarding ownership and possession of the suit property. In my considered opinion, unless the plaintiffs prove prima facie case of their title and possession over the suit property, they are not entitled to any injunction order. An order directing both the sides to maintain status quo in respect of possession without being satisfied as to which side is in possession, is a vague order and cannot be sustained. The plaintiffs in the instant case failed to make out a prima facie case showing their title and possession in respect of the suit property and accordingly they are not entitled to any order of injunction.

Accordingly, the instant appeal succeeds.

Memorandum of appeal is correctly stamped.

Hence, it is

ORDERED

that the instant Misc Appeal be allowed exparte without any cost.

Order dated 21.04.2018 passed by Ld. Civil Judge (Junior Division), 6th Court, Alipore, South 24 Parganas made in Title Suit No. 13 of 2018 is set aside. The injunction application stands rejected.

Let a copy of this judgment be sent to the Court of Ld. Civil Judge
(Jr. Div.), 6th Court, Alipore, South 24 Parganas.

Dictated & Corrected by me

Addl. District Judge,
15th Court, Alipore,
South 24 Parganas.

Additional District Judge,
15th Court, Alipore,
South 24 Parganas.