

**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS
JUDGE, FAST TRACK COURT, RAMPURHAT, BIRBHUM**

Present – **Sandip Kumar Kundu (WB 00988)**
Additional District Judge,
Fast Track Court, Rampurhat,
Birbhum.

Dated, Rampurhat, 11th day of March, 2026



**Misc. Appeal No. 04 of 2025
CIS Registration No. 04 of 2025
CNR No. WBBB05-000095-2025**

(Against the order No. 11 dated 04.01.2025 passed by the Ld. Civil Judge (Junior Division), 1st
Court, Rampurhat, Birbhum in connection with Title Suit No. 316 of 2024)

Ajijul Haque Appellant/Defendant No. 1

-versus-

Nur Hossain and Another Respondent/Plaintiffs

This Misc. Appeal having been heard on 07.02.2026 in presence of :

Mr. Abdul Hasib, Ld. Advocate for Appellant

AND

Mr. Sandip Mukhopadhaya & Mr. Indrajit Banerjee, Ld. Advocates for Respondents

and having stood for consideration to this day, the Court delivered the following Judgment :

J U D G E M E N T

1. The instant Misc. Appeal arises out of order No. 11 dated 04.01.2025 passed by the Ld. Civil Judge (Junior Division), 1st Court, Rampurhat, Birbhum in connection with Title Suit No. 316 of 2024, by which the Ld. Court below was pleased to pass an order of temporary injunction directing both the parties to maintain status quo in respect of the nature, character and possession of the Kha scheduled suit property.

Petitioners' Case:

2. The material facts of the petition filed by the plaintiffs under order 39 Rules 1 and 2 read with section 151 of the CPC are that the plaintiffs are the owners of the The Ka schedule property. The previous owner and possessor of the said The Ka schedule property was Mahammuda The Khatun, who transferred the same to the plaintiffs by executing a registered deed of gift, being No. 5551/2020, executed on 27.07.2020. Accordingly, the plaintiffs became the owners and possessors of the The Ka schedule suit property. According to the plaintiffs, on the Eastern side of the The Ka schedule property, there is main road which is known as Dunigram Road. There is a pathway which is being used for walking on foot as well as for plying bullock carts, which connects the said Dunigram Road with the The Ka schedule property and the said pathway passes over plot No. 973/1488. Defendant No. 1 is one of the owners of the said plot. It is further stated by the plaintiffs that they have been using the said pathway, described as ABCD, from the time of their predecessors for more than 30 years for travelling to the main road from the Ka schedule suit property and the same is being used for ingress and egress between the Ka schedule property and the main road, namely Dunigram Road, marked as E. It is alleged by the plaintiffs that the defendant is threatening to obstruct the said pathway by fixing pillars, and if succeeds in his sinister motive, the plaintiffs will become landlocked, as there is no other way to travel from the Ka schedule property to the main road. In such event, the plaintiffs will suffer irreparable loss, as their enjoyment of the Ka schedule suit property will be hampered and they will sustain huge financial loss. By filing the said petition, the plaintiffs have prayed for passing an order of temporary injunction restraining defendant No. 1 and his agents and servants from changing the nature and character of the schedule mentioned pathway described in schedule Kha, from obstructing/blocking the same and from interfering with the peaceful exercise of the easementary right of the plaintiffs over the said pathway.

Opposite party's case:

3. On the other hand, the contention of defendant No. 1, the appellant herein, apart from an out-and-out denial of the entire case of the plaintiffs, as reflected from the written objection filed by him, is that out of the entire area of the Kha schedule suit property, 12 decimals of land belongs to him, and out of

that he converted 6 decimals of land as Bastu. Thereafter, the appellant obtained written permission from the Gram Panchayat and started construction of a pucca residential house in accordance with law on the said property, leaving the required space of more than 3 feet as prescribed under the Panchayat laws. Knowing fully well the same, the plaintiffs have filed this false case and the injunction petition only to harass the defendant. Therefore, if any injunction order is granted against the defendant, he will suffer irreparable loss and damage and the construction materials such as cement, sand, etc. will be damaged. Hence, the defendant has prayed for rejection of the petition filed by the plaintiffs.

4. The Ld. Court below, having gone through the documents filed by the parties and considering the averments in the temporary injunction petition and the written objection of the principal defendant, including the inspection report, observed, **Upon perusal of the record, it appears that the submission of the defendants that 9 feet space has been left between the construction and the Kandar is not true as the report of the Ld. Commissioner indicate that 5.5 to 6 feet space has been left. Whether the pathway is the only was for ingress and egress for the plaintiffs and they have an easmentary right over the said pathway is a matter of further evidence and cannot be adjudicated at this point. Considering the facts and circumstances at this stage without entering into the merit of the case, the instant injunction petition of the plaintiffs is allowed but without cost.** Accordingly, the Ld. Court passed the impugned order in the following manner :

that the instant application for temporary injunction filed by the plaintiffs is considered and allowed on contest.

Both parties are directed to maintain status quo in respect of nature, character and possession of the Kha scheduled suit property as on this day until disposal of this suit.

5. Being aggrieved by and dissatisfied with the impugned order of temporary injunction passed by the Ld. Court below, defendant No. 1 of Title Suit No. 316 of 2024 preferred the instant Misc. Appeal before the Ld. Additional District Judge, Rampurhat, Birbhum on 24.01.2025, which was well within the period of limitation. Thereafter, the said Misc. Appeal was transferred to this Court by the Ld. Additional District Judge, Rampurhat, Birbhum, vide order No. 2 dated 06.03.2025 for disposal.

Grounds of Appeal:

6. The memorandum of the Misc. Appeal reveals that the impugned order of temporary injunction has been assailed on the following grounds:

i) That the order passed by the Ld. Court below is bad in Law.

ii) That the order passed by the Ld. Court below is contrary to law and facts.

iii) That Ld. Trial Court erred both in fact and in law in passing the order of temporary injunction in the form of status quo in respect of the Kha schedule property against the appellant.

iv) That the Ld. Trial Court did not consider the documents filed by the present appellant in the Trial Court and also did not consider the local inspection report submitted by the Ld. Local Inspection Commissioner, Abul Basar, which shows that on the Northern side of the Kha schedule property and on the Southern side of the Kandari, there is about 9 feet space (3 feet + 6 feet) left by the appellant for ingress and egress.

v) That respondents have claimed an easementary right over the Kha schedule property, but they could not submit even a sheet of paper to prove such easementary right over the said property possessed by the appellant.

vi) That the Ld. Trial Court ought to have rejected the injunction petition filed by the respondents.

7. The respondents/plaintiffs contested the present Misc. Appeal without submitting any written objection. While arguing in this appeal, the Ld. Advocate for the respondents mainly supported the impugned order of the Ld. Court below by submitting that, adhering to the provisions of Order 39 of the CPC, the Ld. Court below, being satisfied with the existence of all the ingredients required for passing an order of temporary injunction, rightly passed the impugned order. Accordingly, the respondents/plaintiffs have prayed for dismissal of the present Misc Appeal.

Points to be Pondered Over:

8. The points for consideration before this Court in this Misc. Appeal are:

A. Whether the Ld. Trial Court was in error in deciding the paramount consideration of 'prim facie case', 'balance of convenience &

inconvenience' and 'irreparable loss & injury' in favour of the plaintiffs/respondents ?

B. Whether the Ld. Trial Court has misapplied the law in deciding the prayer for temporary injunction against defendant No. 1/appellant?

C. Whether the order allowing the prayer for temporary injunction in the form of 'status quo' was an incorrect exercise of legal discretion ?

Decision with ratiocination:

9. Usually, the prayer for grant of an interlocutory injunction is made at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain, and remain so until they are established at the trial on the basis of evidence. The Court, at this stage, acts on certain well settled principles governing the administration of this form of interlocutory remedy, which is both temporary and discretionary. The object of an interlocutory injunction is to protect the plaintiff against injury arising from the violation of his rights for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty is resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights, for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies. The interlocutory remedy is intended to preserve status quo with respect to the rights of parties which may appear on a *prima facie* basis. The Court also, in restraining a defendant from exercising what he considers to be his legal right, but which the plaintiff seeks to prevent, places such consideration in the scales as relevant factors.

10. In **Shiv Kumar Chadha v. Municipal Corporation of Delhi (1993) 3 SCC 161**, the Hon'ble Supreme Court held that, it has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.

11. After taking guidance from the trite propositions of law discussed above, let us now examine the present case. In the impugned order, the Ld. Trial Court has also observed, **Local inspection was conducted on the suit property by the Ld. Commissioner appointed by this Court and he submitted his report on 29.11.2024. According to the report of the Ld. Commissioner, some work of construction of pillars is going on and there is a space of around 5.5 to 6 feet between the cement pillar and the Kandar Further, it is the submission of the Ld. Commissioner that as he is not a survey passed commissioner, he is not qualified to measure the disputed portion of the suit property. No observation has been made by the Ld. Commissioner about whether, the pathway is the only way for the plaintiffs to access the main road from the Ka scheduled suit property.**

12. From the averments and submissions of both sides, it emerges that the plaintiffs have derived their ownership in respect of the Ka schedule property on the strength of execution and registration of a deed of gift, being No. 5551/2020 dated 27.7.2020. The said deed shows that Mahammuda Khatun, the grandmother of the plaintiffs, transferred the Ka schedule suit property by way of registered deed of gift. It is an admitted position in this case that defendant No. 1 is one of the owners of the Kha schedule suit plot. The version of the plaintiffs is that they have been using some portion of the Kha schedule property, particularly described as ABCD, for their ingress and egress between the Ka schedule property and the main road marked as E namely, Dunigram Road and that they have been enjoying such right from the time of their predecessors for more than 30 years, thereby acquiring an easementary right. Now, as defendant No. 1 tried to interfere with such easementary right of the plaintiffs, the plaintiffs instituted the instant suit for declaration of easementary right of way and permanent injunction and also filed the present injunction petition.

13. If a glance is given to the said gift deed, it appears that the donor of the said deed did not mention anything regarding any claim of easementary right over the Kha schedule suit property. The plaintiffs asserted that since the time of their predecessors-in-interest of the Ka schedule property, the ABCD portion of the Kha schedule property has been using for their ingress and egress, but prima facie the deed relied upon by the plaintiffs does not support such contention.

14. Nevertheless, the Ld. Trial Court has held that whether the said claimed pathway is the only ingress and egress for the plaintiffs and whether they have an easementary right over the said pathway, is a matter to be decided on the basis of evidence at the time of trial. This Court is also of the view that such dispute can only be unearthed after trial.

15. However, once the plaintiffs have agitated the issue of easementary right in the suit and have expressed their apprehension regarding obstruction of their said claimed right, though the principal defendant has denied and dispute the same, it can be said that the plaintiffs have a prima facie case to file an application for temporary injunction against the appellant of this Misc. Appeal.

16. It is an admitted position that the prayer for temporary injunction has been sought in respect of the land in which defendant No. 1/appellant is owner to the extent of 12 decimals of land out of the total area of 38 decimals. It has already been noted by this Court that nothing has come on record at this stage, supported by any document, to show that the plaintiffs are using a part of the Kha schedule property belonging to the appellant as the only pathway. On the other hand, the appellant has submitted documents from which it appears that he obtained permission from the competent authority for constructing a residential building. From the reports of the Ld. Advocate Commissioners dated 23.09.2024 and 29.11.2024, it appears that new building construction was under process. Further, the report of the Ld. Advocate Commissioner dated 23.09.2024 signifies that construction work of the building was going on and a newly erected structure was found at the plinth level. At the time of inspection, the Ld. Commissioner inter alia also found a criss-cross arrangement of tie-beams, with each set consisting of 4 of 12 mm rods meant for vertical reinforced pillars to be erected later on. During argument the Ld. Counsel for the appellant/defendant No. 1 candidly submitted that if any injunction is granted against the appellant, he will suffer irreparable loss and damage as the construction materials such as cement, sand, etc. will be damaged. It is further submitted by the Ld. Counsel that the appellant will never encroach the passage left by him over the Kha schedule property.

17. Therefore, the appellant intends to undertake construction on his own land after obtaining the necessary sanction/permission form the competent authority, and in such endeavour he has already engaged himself in construction

work on his own property to some extent and had purchased building materials. On the other hand, the deed of the plaintiffs does not reflect any easementary right over any portion of the Kha schedule property being enjoyed by the donor of the deed, and thereby she conveyed such right to the donees.

18. In such context, it explicitly postulates that in this case the balance of convenience and inconvenience tilts in favour of the appellant. If the temporary injunction order is not granted as prayed for by the plaintiffs, the plaintiffs will not be prejudice, but if it is allowed, a bona fide owner of an immovable property will be prevented from enjoying his own property as per his will, in this case by constructing a residential house for proper enjoyment of the property under his ownership and possession. This being the passion, it can safely be said that in this case if the order of injunction is passed, even in the form of status quo regarding the nature and character of the Kha schedule suit property, the appellant/defendant No. 1 shall definitely suffer irreparable loss and injury which cannot be compensated in monetary value. The Hon'ble Supreme Court of India, in **2006 AIR (SCW) 1077** and **2008 AIR (SCW) 3817**, underscored that if there is no prima facie material to show that the plaintiff is in possession of the suit property and, on the other hand, the defendants are in the possession of the same by raising construction, temporary injunction should not be granted.

19. At this juncture, this Court finds it necessary to emphasize that the plaintiffs prayed for temporary injunction before the Ld. Court below in respect of the Kha schedule suit property. It appears that the Kha schedule suit property comprises 38 decimals of land, wherein the plaintiffs have claimed an easementary right to the extent of the area described as ABCD consisting of 10 feet in length and 9 feet in breadth. Further, as per the case of the appellant, he is the owner of the Kha schedule property to the extent of only 12 decimals of land. The impugned order shows that the Ld. Trial Court passed an order of temporary injunction in respect of the entire Kha schedule property without any precision, as the order demonstrated that both parties were directed to maintain status quo in respect of the nature, character and possession of the Kha scheduled suit property as on the date of passing of the order until disposal of this suit.

20. This Court, in this appeal, is required to consider the propriety, legality and validity of the impugned temporary injunction order passed on

04.01.2025 by the Ld. Court below. Thus, the scope of the present appeal is very limited. The order of temporary injunction was passed after contested hearing of both parties and this Court needs to examine the impugned order in the light of the facts to determine whether the Ld. Court below committed any error of law while passing the said order.

21. Keeping in mind the above discussion, this Court finds that the Ld. Court below ought to have considered that there was no necessity in the case of the plaintiff to grant an injunction; especially when it is an admitted fact that defendant No. 1 is the owner of the Kha schedule suit property to some extent and has been in possession thereof prior to the filing of the suit.

22. Therefore, after assiduous consideration of the entire materials on record available before the Ld. Court below and abiding by the canon of prudence and circumspection, this Court firmly opines that the order of temporary injunction passed by the Ld. Court below on 04.01.2025 needs to be set aside.

23. In result, the instant Misc. Appeal succeeds.

24. Memo of appeal is found to be sufficiently stamped.

25. Hence, it is

ORDERED

that the instant Misc. Appeal be and the same is allowed on contest, but without any order as to costs.

The order No. 11 dated 04.01.2025 passed by the Ld. Civil Judge (Junior Division), 1st Court, Rampurhat, Birbhum in Title Suit No. 316 of 2024 is hereby set aside.

However, the appellant is directed to undertake the proposed construction of his house, if any, by strict compliance with and adherence to the permission/sanction granted by the competent authority in respect of his own property, by leaving the statutory required space surrounding the proposed residential building within the prescribed validity period, i.e., by 25.07.2026 or extended period, if any.

Interim order, if any, stands vacated.

Interim connected petition, if any, stands disposed of.

Let a copy of this judgment, along with the case record of Title Suit No. 316 of 2024, be sent down to the Ld. Trial Court for information and necessary action.

Dictated & corrected by me.

Sd/-
Additional District Judge,
Fast Track Court, Rampurhat,
Birbhum.

Sd/-
Sandip Kumar Kundu
Additional District Judge,
Fast Track Court, Rampurhat,
Birbhum.