

In the Court of District & Sessions Judge, Bankura

Present : Mir Rashid Ali (WB00701)

District & Sessions Judge, Bankura

Civil Revision No. 7 of 2026

CNR No WBBK01-001770-2026

Order No. 7

Date: 13.08.2026

Today is fixed for further extension of the stay operation and order.

Ld. advocates of both sides are present.

Heard Ld. Lawyers for both parties.

An application U/s. 115A of the Civil Procedure Code registered as Civil Revision 7 of 2026 is taken up for consideration and passing order.

The casus belli of the case was germinated when The appellants Sudhir Mondal and Ors. filed a Title Suit registered as 73/2020 before the court of Ld. Civil Judge (Sr. Divn.) Bankura .

During the pendency of the suit, an application for Injunction was considered.

The Ld Court while disposing the Injunction Petition observed as follow " *At the stage of the suit where neither parties have adduced evidence, it is found, on perusal of the record, that there is no existence of any registered deed or a decree of the Court to substantiate partition by metes and bounds between the parties. In such circumstances, construction of a building upon a major portion of the property by one co-sharer over undemarcated and unpartitioned property is likely to cause irreparable loss and injury to the other co-sharers. It is also admitted by the principal defendants that they have in a process of construction over their share of property. Hence, if construction is allowed to be carried out, it would result in unnecessary complications during final decree when the suit property would be partitioned by metes and bounds. The defendants not denied on affidavit the plaintiffs' allegation of construction over a major and prime portion of the property. Considering this fact, I am inclined to hold that the balance of convenience tilts in favour of plaintiff because refusal to grant an order of temporary injunction is likely to cause more prejudice to the plaintiffs' than granting the same would do the defendants. It is the fact that in a suit for partition, possession of a co-owner shall be presumed unless there is specific allegation of ouster. In the present suit, there is no such plea of ouster by the defendants against the plaintiffs.*

An order of injunction in the form of status quo was allowed in respect to the nature and character of the suit property till disposal of the suit.

During the pendency of the suit and after disposal of Injunction Petition, an application U/s. 151 Civil Procedure Code was filed and pressed by defendants no. 1 and 2 stating that they have acquired 16 decimal of land by way of purchase in the year 2021 and have no concrete house until now.

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It is laid down by the defendants no. 1 and 2 that after converting *their purchase land to a bastu land and after acquiring prior permission from the local authority*, they have completed the foundation work but by the order of injunction they have to stop the further construction.

It is also laid down by the defendant no. 1 and 2 that they have no accommodation.

The Ld. Court after giving audience to both the parties allowed the application as filed by the defendants subject to suitable terms and conditions as follows:

1. Defendant No. 1 and 2 shall not create any kind of disturbance by any means whatsoever in the suit property at the time of construction work of their house;
2. Defendant no. 1 and 2 shall not change the nature and character of the suit property except construction work of their house of their purchased portion only;
3. Defendant no. 1 and 2 shall abide by the statement of their petition dated 29.06.2026 Under Section 151 of the Civil Procedure Code;
4. Such construction of their house shall be subjected to abide by the final findings in the conclusion of determination of this suit;
5. The defendant no. 1 and 2 shall not claim any equity at the time of final hearing.

Now assailing the impugned order The Ld. Lawyer on behalf of the appellants argued that the order as passed is bad in law.

By citing a decision as reported in *2004 AIR Kerala 95*, Ld. Lawyer argued that the order as passed by the Ld. Court is not tenable in the eye of law.

He also relied on a decision as reported in *AIR 209 Guwahati 23* that the order as passed is not maintainable and also submitted by citing a decision as report in *204(2) CLJ(Cal)*.

The Ld. Lawyer also cited a decision of the Punjab and Haryana High Court in C.R. No. 5185 of 1998. D/d.8.10.1999.

The Ld. Lawyer on behalf of the appellants submits that the defendants have no locus standi to get relief by way of the order as passed by the Ld. Court.

It is submitted that the impugned order if left alive, the very core of the suit will be at jeopardized and hence, he filed an application U/s. 115A of the Civil Procedure Code. It is also submitted that the Ld. Court has failed to observe that the defendants have misguided the court on the pretext of construction despite having no valid permission.

It is also submitted that defendants ought to have sought for relief U/s. 39 Rule 4 of the Civil Procedure Code.

Ld. Lawyer for the defendants/respondents cited a decision of the Hon'ble Apex while disposing *Civil Appeal no. 3488/2003 (Arising out of S.L.P.(C) No. 19030 of 2002)*

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D/d. 17.04.2003 Shiv Shakti Coop. Housing Society, Nagpur - Appellant vs M/s. Swaraj Developers And Ors. - Respondents and also submitted that in an application U/s. 115 of Civil Procedure Code, this court has limited arena as the consequence of the impugned order as passed does not hit the core of the case.

It is submitted by the Ld. Lawyer that the Ld. Court has rightly passed the order keeping into consideration the subsequent events and changes that took place.

It is also submitted that the order as passed not appealable and so it is hit by the provision of 115A of the Civil Procedure Code.

It is also submitted that the suit is not finally disposed of and hence the relief by way of 115A of the Civil Procedure Code may not be granted.

To address the core area of the dispute, let us revisit once again to the impugned order which is the subject matter of dispute.

The Ld. Court observed in the impugned order that "in my view of above discussion, observation and also considering submissions of both sides, the petition dated 29.06.2016 under sec. 151 of the Civil Procedure Code filed by the defendant nos. 1 and 2 is hereby allowed but with certain conditions which are as follows :

1. Defendant Nos. 1 and 2 shall not create any kind of disturbance by any means whatsoever in the suit property at the time of construction work of their house ;
2. Defendant Nos. 1 and 2 shall not change the nature and character of the suit property except construction work of their house of their purchased portion only.
3. Defendant No.s. 1 and 2 shall abide by the statement of their petition dated 29.06.2026 under section 151 of the Civil Procedure Code.
4. Such construction of their house shall be subjected to abide by the final findings in the conclusion of determination of this suit.
5. The defendant no.s 1 and 2 shall not claim any equity at the time of final hearing".

The point to decide here is whether the order as passed by the Ld Court require interference or not.

Section 115 of the code goes as follows:

The High Court, in cases arising out of original suits or other proceedings of the value exceeding one lakh rupees, and the District Court, in any other case including a case arising out of an original suit or other proceedings instituted before the commencement of the Code of Civil Procedure (Orissa Amendment) Act, 1991, may call for the record of any case which has been decided by any Court subordinate to the High Court or the District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate Court appears--

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(a) to have exercised a jurisdiction not vested in it by law, or
(b) to have failed to exercise a jurisdiction so vested, or
(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit:

Provided that in respect of cases arising out of original suits or other proceedings or any valuation, decided by the District Court, the High Court alone shall be competent to make an order under this section;

Provided further that the High Court or the District Court shall not, under this section, vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceeding, except where -

(I) the order, if so varied or reversed, would finally dispose of the suit or other proceeding; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

*Explanation--.*In this section, the expression "any case which has been decided" includes any order deciding an issue, in the course of a suit or other proceeding.]

Whereas Section 115 A of the code goes as follows:

(1) A District Court may exercise all or any of the powers which may be exercised by the High Court under section 115.

(2) Where any proceeding by way of revision is commenced before a District Court in pursuance of the provisions of sub-section (1), the provisions of section 115 shall, so far as may be, apply to such proceeding and references in the said section to the High Court shall be construed as reference to the District Court.

(3) Where any proceeding for revision is commenced before the District Court, the decision of the District Court on such proceeding shall be final and no further proceeding by way of revision shall be entertained by the High Court or any other court.

(4) If any application for revision has been made by any party either to the High Court under section 115 or to the District Court under this section, no further application by the same party shall be entertained by the other of them.

(5) A court of an Additional Judge shall have and may exercise all the powers of District Court under the section in respect of any proceeding which may be transferred to it by or under any general or special order of the District Court.

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Whereas section 151 of the Civil Procedure Code goes as follow:-

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court".

On overall perusal of the impugned order 36 dated 08.07.2026 it is found that Ld. Court of Civil Judge (Sr. Divn), Bankura while considering an application under section 151 of Civil Procedure Code allowed the application of the defendant permitting them to construct the property, as claimed by the defendants.

Here, the Ld. Lawyer for the plaintiffs/appellants vigorously has criticized the order on the ground that the consequence of the order is having a far reaching effect. The Ld. Lawyer for the plaintiffs/appellants highlighted that the defendants cannot claim property in more than one manner.

It is highlighted by the Ld. Lawyer that by filing written statement, the defendants claimed that the property belongs to them by way of partition and subsequently the defendants are also claiming the property by way of purchase. The Ld. Lawyer submits that the construction is carried out will cause irreparable loss and the very purpose of the suit will be frustrated.

I am of the view that at present the controversy before this court is whether the Order 36 dated 08.07.2026 is liable to be set aside by this court or not.

Admittedly, this is a suit for partition wherein parties are contesting the suit by filing written statement. Admittedly, issues have been framed.

I am of the view that it is too precarious to come to conclusion that the plaintiffs' relief as mentioned in the prayer of the plaint will be jeopardized.

I feel the argument as placed by the Ld. Lawyer for the plaintiffs is too overstretched and it is not justified to come to conclusion at this stage that the foundation of the suit has been shaken by such order.

I am also of the view that the condition as imposed by the Ld. Court leaves an avenue for the plaintiffs to proceed with the suit as the order was passed with condition wherein it was conditioned by the court that the defendant shall not create any kind of disturbances or shall change the nature and character of the property except construction of the purchased portion property.

It was also conditioned by the court that such construction shall be subjected to abide by a final finding in the conclusion of determination of the suit. As per spirit of the order the defendant no. 1 and 2 shall not claim any equity at the time of final hearing.

If that be so, it cannot be said that the impugned order has reached the finality.

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I am of the view that if it is found after evidence that the defendants will have to demolish the construction then they have to carry out the same.

The decisions as placed by the Ld. Lawyer for the appellants is not applicable here because now, this court is adjudicating issue regarding order passed by the court of Ld. Civil Judge (Sr. Divn.) Bankura U/s. 151 Code of Civil Procedure.

Moreover, arena of this court is restricted. It is not justified for this court to entertain an application u/s 115A of Civil Procedure Code against the order passed by the Ld. Court while disposing an application u/s 151 of the Civil Procedure Code.

As the issues have been framed and settled the parties are at liberty to assert their claim and counter claim before the court at the time of final hearing.

In view of my observation after considering the material on record, including the LCR and after going through the salutary decisions passed by the Ld. Lawyer for the parties, I am of the view that the revision as filed is devoid of merit and thus, rejected.

Hence, it is

ORDERED

that the Civil Revision 07/26 be and the same is rejected on contest without cost.

The stay order, if any, be vacated.

Let the LCR along with the copy of this order be sent back to the Ld. Court with a direction to take endeavour for disposal of the case without granting unnecessary adjournment.

Dictated & Corrected by

Sd/-

(Mir Rashid Ali)

District Judge, Bankura

Sd/-

(Mir Rashid Ali)

District Judge, Bankura