

Misc Appeal No. 07 of 2025

WBCB010023642025



HIGH COURT FORM NO. (J) 2.
Heading of judgment in original Suit/Case

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
1st COURT, COOCH BEHAR

Present: ANIRBAN DAS (WB00691)
Addl. District Judge, 1st Court
Cooch Behar.

MISC. APPEAL No. 07 of 2025

(Arising out of Title suit No. 63 of 2025)

1. Smt. Beauty Dam Roy

2. Sri Kalpesh Roy

..... *Appellants/Plaintiffs*

~ Vs ~

1. Smt. Jayasri Basu and 2 others

..... *Respondents/Defendants*

Judgment delivered on: 22.05.2026

J U D G M E N T

The instant Misc. Appeal was filed by Smt. Beauty Dam Roy and others being dissatisfied with the order dated 01.08.2025 passed by Ld. Civil Judge, (Jr. Divn), Sadar, Coochbehar in Title Suit No. 63 of 2025.

The present appellants being the plaintiffs had filed the Title suit vide No. 63 of 2025 with a prayer for decree of declaration of title over the suit property by virtue of adverse possession.

The present appellants had preferred a petition before the Ld. Trial Court praying for an ad-interim relief.

Ld. Trial Judge has been pleased to refuse to grant any ad-interim relief on the ground that the balance of convenience and inconvenience was in favour of the appellants and they have failed to establish at least prima facie their right title and interest over the suit property.

Being aggrieved with the said order, the present Misc appeal was filed.

Misc Appeal No. 07 of 2025

The respondents also turned up in this appeal and made their respective submission and a written objection was also filed by the respondents.

Both sides have filed the relevant documents relied upon by them.

The point to be considered is whether the impugned order suffered from any illegality or not.

Decision with Reasons

At the time of hearing of the instant Appeal, the parties had placed all their cards for consideration.

In this appeal my scope is very limited. I have to consider the impropriety or illegality of the impugned order and I am not in a position to consider any other aspects which may hit the merit of the suit now pending before the Ld. Civil Judge (Jr. Divn), Sadar, Coochbehar. I want to consider the respective submissions of the parties within such ambit.

It appears from the impugned order that the prayer for ad-interim injunction was refused by the Ld. Trial court.

According to the appellants, they were residing in the suit property since June 1979 without any interference of any other person(s) and that they have made construction thereon and also run a business from the said suit plot. It was the version of the plaintiff that the predecessor of the plaintiffs namely Tikendrajit Roy started to reside in the suit plot of land as the same was lying vacant since long and he had developed the said plot by removing the bushes and erected a construction thereon and started a business from the said plot of land.

As per the averment of the plaintiff, the said property was recorded in the name of Alo Rani Basu and as the said recorded owner did not raise any protest, the said Tikendrajit Roy started to stay there since June 1979 and paid the tax of the said land in the name of the original owner Alo Rani Basu.

It was the version of the plaintiffs that on 06.06.1980, the said Alo Rani Basu claimed the suit property and at that time Tikendrajit Roy denied to vacate the suit property in favour of Alo Rani Basu and inspite of repeated request of the said Alo Rani Basu, he did not had over the vacant possession of the suit land to its recorded owner and started to possess the said property adversely denying the right title and interest of the original owner.

From the plaintiff it also came out that the said Alo Rani Basu never took any steps to evict the said Tikendrajit Roy from the suit property even when the said Tikendrajit denied to vacate the suit property to her.

Misc Appeal No. 07 of 2025

We came to know from the plaint that the said Alo Rani Basu expired leaving behind her son Chanchal Kumar Basu and the said Chanchal Kumar Basu expired leaving behind the defendants being his widow and sons, as the legal heirs.

The said Tikendrajit Roy expired leaving behind his son Kamalendu Roy and the said Kamalendu Roy expired leaving behind the plaintiffs being his widow and son as his legal heirs.

As per the version of the plaintiffs, the defendant no. 2 and 3 made a registered deed of gift in favour of their mother (defendant no. 1) on 22.04.2025 to frustrate the right title and possession of the plaintiffs over the suit property and the said defendant no. 1 inserted her name in the LRROR and took steps to develop the property by ousting the present plaintiffs.

To protect their right title and interest, the plaintiffs had filed the instant suit praying for a declaration of their title in the suit property as they were in adverse possession of the said property.

The respondents turned up and by filing a written objection placed before this court some important points.

According to the respondents the predecessor of the appellants namely Tikendrajit Roy used to look after the suit property of Alo Rani Basu Bose and used to collect rent on behalf of her son Chanchal Kumar Basu and after demise of the said Tikendrajit Roy, his son Kamalendu Roy used to look after the property (suit property) of Alo Rani Basu Bose.

From the said WO it also appears that after demise of Kamalendu Roy his legal heirs put pressure upon the present respondents so that the suit property can be transferred in their name by gift or any other way and when the respondents got the scent of such intention of the appellants they have decided to dispose of the property and at that time the present appellants started non-cooperation with the respondents and denied to hand over the possession of the suit property.

In support of the claim of the present appellants they have placed before me the electricity bills, trade license, Voter list to establish their possession over the suit property.

On the other hand the respondents placed before me the copy of the registered Deed of Gift and the latest ROR showing the name of Alo Rani Basu Bose as the recorded owner of the suit property.

The appellants also filed the Tax receipts which were paid by the predecessor of the present appellants.

Misc Appeal No. 07 of 2025

From the content of the plaint it appears that the plaintiffs/ appellants admitted that they had no right, title and interest over the suit property and that they took entry into the said property as the same was lying vacant for a considerable period.

The appellants also admitted that though the original owner Alo Rani Basu Bose asked the predecessor of the appellants to hand over the possession of the suit property but she was denied.

Therefore, by the avertainment of the plaint the appellants admitted the fact that they have occupied the suit property forcefully denying the title of the original recorded owner Alo Rani Basu Bose.

It is needless to mention that a Title by way of adverse possession may be set up if the facts on the record found sufficient to support the plea and the opposite party is not taken by surprise. A declaration of Title by adverse possession cannot be given on a Title not distinctly stated in the pleadings.

It also the fact that the plaintiff must prove, not merely a right to property but a possessory title.

In the instant case from the pleading it is very much clear that the predecessor of the present appellants forcefully encroached the property and denied the Title of the original owner Alo Rani Basu Bose.

Plea was taken that the Tax bill of the suit property was paid by the predecessor of the present appellants but the same cannot be considered a document of possession. The said receipts also shows that Alo Rani Basu Bose was the owner of the suit property and Tax was paid by the predecessor of the present appellants in the name of Alo Rani Basu Bose.

The appellants also relied upon the electricity bills issued by WBSEDCL.

Unfortunately they failed to mention that vide memo No. NTCCC/372 dated 06.08.2025 the present appellants were directed to submit the documents regarding the ownership of the suit property.

This document issued by WBSEDCL goes against the plea of the present appellants.

The act of the appellants and their predecessor shows that they have forcefully occupied the property denying the right, title and interest of the recorded owner.

The registered Deed of Gift is found proper and the same was executed by the respondents to protect their interest over the suit property.

The Title of the plaintiffs/ appellants over the suit property is too weak to stand.

The said appellants prayed for injunction on the basis of these documents and their pleadings.

Misc Appeal No. 07 of 2025

Power of granting injunction is a tremendous power which has to be exercised sparingly and not like a horse riding stunt.

In this case by way of the pleadings the appellants specifically stated that they have started to occupy the suit property denying the Title of its recorded owner Alo Rani Basu Bose.

Their pleadings itself shows that the said appellants are trespassers in the suit property.

Therefore, this court, at this stage, firmly opines that any order of injunction, if granted, would likely to cause more injury to the respondents than the appellants, if it is refused.

The balance of convenience and inconvenience, at stage of proceeding, is also slanted to the respondents.

Thus, a sheer lack of urgency propels this court to respond to the prayer of ad interim injunction on the negative.

In sum, I do not find any latches on the part of the Ld. Trial Court when the prayer for ad interim injunction was refused by the impugned order dated 01.08.2025 in TS 63 of 2025.

I find no merit in the instant Misc Appeal and as such the instant Misc Appeal should be dismissed.

The impugned order as passed by the Ld. Trial Judge will remain as it is.

Hence, it is

O R D E R E D

That the instant Misc. Appeal vide No. 07 of 2025 be and the same is **dismissed on contest without cost.**

The impugned order dated 01.08.2025 passed by Ld. Civil Judge, (Jr. Divn), Sadar, Cooch Behar in Title Suit No. 63 of 2025 is hereby affirmed.

Stay order, if any, be vacated.

Let a copy of this judgment be sent to the court of the Ld. Civil Judge (Jr. Divn) Sadar, Cooch Behar and the parties are directed to turn up before the Ld. Civil Judge (Jr. Divn) Sadar, Cooch Behar, on the date already fixed by the said Ld. Court.

The Ld. Trial Judge is hereby requested to dispose the injunction application after giving scope of proper hearing to both sides.

Dictated & Corrected by,

Addl. District Judge, 1st Court,
Cooch Behar.

(Anirban Das)
JO Code No. WB00691
Addl. District Judge, 1st Court,
Cooch Behar.