

Title Appeal No 01 of 2025.

Order No. 06
Dt. 24.07.2025.

Both the parties filed their respective Ld. Lawyer hazira.

CR is taken up for passing order with respect to temporary injunction petition U/Or. 39 R. 1 & 2 R/w Sec 151 of the CP Code of the appellants, which was heard on 05.07.2025.

During the course of hearing of the temporary injunction petition the Ld. Lawyer for the appellants submitted that the appellants belonged to ST (Scheduled Tribe) community and grandfather of appellant Nos 1 to 4 and great grandfather of appellant No. 5 & 6 were allotted 3 acres of surplus land of Thurbo Tea Estate ie the suit property and they were possessing the same since the year 1940 and that after the demise of their predecessors all the appellants are possessing the same by cultivating the same as well as by paying the tax to the Government.

Ld. Lawyer for the appellant further contented that respondent No. 1 issued eviction notice dt. 31.08.2023 as well as also by issuing another notice dt. 17.10.2023 directed the appellants to vacate the suit property and thereafter some persons having political influence also demolished a portion of their residential house standing on the suit property as the appellants shifted somewhere else for the purpose of repairing of their house. It was also contended by him that apprehending possibility of their being dispossessed from the suit property the appellants filed the Title Suit bearing Title Suit No. 02 of 2024 before the Court of the Ld. Civil Judge (Jr. Div) Mirik praying for decree of declaration of their title, injunction and other consequential relief.

It has further been submitted from the side of the appellants that the Ld. Trial Court finally rejected the plaint under Or. 7 R. 11 of the CP Code vide its final order / judgment dt. 05.02.2025 and decree dt. 15.02.2025 and being aggrieved and dissatisfied they preferred a Misc Appeal bearing No. Misc Appeal No. 01 of 2025 before the Court of the Ld. District Darjeeling but the Ld. District Judge, Darjeeling vide its Or. No. 2 dt. 04.03.2025 disposed off the said Title Appeal by observing lack of jurisdiction with a liberty to the appellants to prefer the instant appeal before this Court and the same gave rise to instant and temporary injunction petition.

During the course of hearing the Ld. Lawyer for the appellants by taking this Court through documents of the respondents certifying their possession in and over the suit property further submitted that those documents of the respondents itself prove that the appellants are in possession of the suit property both in the capacity of as an allottee as well as by virtue of adverse possession since the year 1940 but the respondents without taking the recourse to law for getting the possession of the suit property are taking all sorts of measures for dispossessing the appellants from the suit property and accordingly they are required to be enjoined by an order of an temporary injunction till disposal of the instant appeal.

To fortify his such argument Ld. Lawyer fort the appellants relied upon the case of ***Ravindra Kaur Grewal Vs. Manjit Kaur & Ors, (2019) 8 SCC 729, Govt. of Kerala & Anr. Vs. Joseph & Ors, 2023 SCC OnLine SC 961, Ashoka Dubey & Ors. Vs. Arjun Dey & Ors, 2022 SCC OnLine Cal 590 & Vinod Infra Developers Ltd. Vs Mahavir Lunia & Ors, 2025 SCC OnLine 1208.***

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On the other hand, the Ld. Lawyer for the respondent Nos. 1, 2, 3 & 8 vehemently opposed the temporary injunction petition of the appellants by assailing the same on two aspects ie maintainability of the same after rejection of the appellant's plaint U. Or. 7 R. 11 CPC as well as subsequent development of allotment of the suit property in favor of the Darjeeling District Judiciary for construction of the Mirik Court complex.

Ld. Adll, GP in-charge by referring to the copy of order of the Hon'ble Supreme Court dt. 27.05.2025 passed in the case of ***lee Mumbai Section Welfare Vs. Global lee Institute For Engineers, Civil Appeal No. 7235/2025*** submitted that the Hon'ble Apex Court clearly observed that once the plaint itself has been rejected U/Or. 7 R. 11 of the CP Code an order of temporary injunction cannot operate against the defendants of the suit.

He also by relying upon the LR ROR No. 1011 further contended that the possession of the suit land has already been transferred to the Judicial Department and the same has already been recorded in the name of the Mirik Court and accordingly the temporary injunction petition of the appellants becomes infructuous and thereby also liable to be rejected on that ground alone. He prays for rejection of the temporary injunction petition.

Perused the materials of the entire case record including impugned temporary injunction petition, W.O. and documents annexed by the parties and I have also gone through the case laws as relied upon by the parties.

Considered.

On going through the memo of appeal and impugned temporary injunction petition as well as the documents relied upon by the appellants their pleading case may be capsulized in the manner that they are claiming title in and over the suit property by virtue of their being the legal allottee through their predecessors by the respondents and their being in possession of the same since the year 1940 to the adverse of the Govt. of West Bengal/owner of the suit property.

On the other hand, the respondents WO reveals that they all along denied the possession of the appellants and it by taking recourse to Sec 4 & 5 of the West Bengal Estate Acquisition Act 1953 took the plea that on and from 1st Baisakh 1362 BS the entire land of Mouja Thurbo Tea Estate including the suit plot were vested to the State and thereafter any part of the same has never been settled or allotted in the name of the appellants or their predecessors and that the Ld. Trial Court rightly rejected the plaint of the appellants by virtue of Sec. 57B(2) of The West Bengal Estate Acquisition Act 1953 which bars the jurisdiction of a Civil Court.

From the pleading of the parties it is the undisputed fact of this case that the appellants preferred the instant appeal against the final order / judgment and decree passed by the Ld. Civil Judge (Jr. Div), Mirik whereby the plaint of the appellants suit bearing Title Suit No. 02 of 2024 was rejected U/Or. 7 R. 11 of the CP Code and the said judgment / decree of the Ld. Trial Court is still in force neither being set aside nor modified by any higher forum and under such prevailing circumstances the appellants preferred the impugned temporary injunction petition. Thus, it cannot be said that impugned appeal is the continuation of appellant's said Title Suit.

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The Hon'ble Supreme Court in the case of **Ieee Mumbai Section Welfare (Supra)** while considering the maintainability of a temporary injunction petition in an appeal preferred against an order of rejection of plaint U/Or. 7 R. 11 of the CP Code clearly observed that *“where an appeal is filed by being aggrieved by the rejection of plaint in exercise of powers U/Or. 7 R. 11 CPC, the High Court ought not to have granted an order of temporary injunction. We say so for the reason that the plaint itself has been rejected by the commercial Court and the correctness or other wise of the said rejection a matter at large before the High Court. When the plaint itself has been rejected, it cannot be said that the appeal filed against such an order is a continuation of a suit.....”*

During the course of hearing the Ld. Lawyer for the appellants submitted that the said observation of the Hon'ble Supreme Court has got no application on the factual matrix of the instant appeal as the same was made in the light of a commercial suit. Besides that, he also by referring the case of **Smt. Ashoka Dubey (Supra)** of our Hon'ble High Court also submitted that such contention of the respondents is not tenable in the eye of law as the Court has to initially protect the possession of the party till the subject matter of the suit is finally decided.

On going through the such observation of the Hon'ble Supreme Court there remains no doubt in the mind of this Court that the same is not confined only to their commercial suits but the same has got binding effects on all the sorts of suits and appeals under the provisions of the C.P.Code. The plea of the ld.lawyer for the appellants that such observation has got no binding effects under Article 141 of the Constitution of India as the same has not been made while finally deciding any appeal appears to this Court to be devoid of any merit as such observation of the Hon'ble Supreme Court is nothing but its finding on a question of law and all the Courts have to follow the same. Accordingly, this Court is of the view that in the light of such dictum of the Hon'ble Supreme Court such submission of the Ld. Lawyer for the appellants is devoid of any merit. Consequently, no injunction order can be granted on the basis of the impugned temporary injunction petition until and unless the impugned final order/Judgment and decree is set aside or modified by any higher forum. Thus, the impugned temporary injunction petition of the appellants is not maintainable at this stage.

Since, this Court already came to the findings that the impugned temporary injunction petition of the appellants is not maintainable at this stage, so carrying on further discussison regarding appellants claim of possessing the suit property and denial by the respondents would lead us nowhere and would be of wastage of valuable judicial hours. However, since it is evident from the LR R.O.R. that the possession of the suit land has also been transferred to the Darjeeling District Judiciary, so on that score also impugned temporary injunction petition has got no merit.

Hence, it is

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ORDERED

that the appellants' temporary injunction petition U/Or.39 R.1 & 2, R/W Sec.151 CPC dated 11.03.2025 stands dismissed on contest but without any cost.

As the Trial court record has already been received and notices has already been served, so the instant appeal is ready for hearing. However, as the P.O. is going to retire on this month and accordingly date is not fixed for hearing at this moment.

To 30.08.2025 passing necessary order.

D/C by me

ADJ/Kurseong.

.....Sd/-.....

ADJ/Kurseong.

JO CODE- WB00601