

West Bengal Form No. 3702

HIGH COURT FORM NO. (J) 3

**HEADING OF JUDGEMENT IN APPEAL**

**Disctrict : Chinsurah**

**In the Court of Additional District Judge, 1<sup>st</sup> Court, Chinsurah**

**Present : Rintu Sur (J.O WB 00877)  
Addl. District Judge, 1<sup>st</sup> Court,  
Chinsurah, Hooghly.**

**Dated 16<sup>th</sup> April, 2026**

**Misc Appeal No. 88 of 2025  
(CNR WBHG01- 002686-2025)**

**Arising out of the order no. 07 dt. 11.06.2025 passed by the Ld. Civil Judge,  
(Jr. Div. ) 1<sup>st</sup> Court, Hooghly, Sadar in Title Suit No.499/2024.**

Ratan Dey and another. ....Appellants/ Defendants

Versus

Minor Niladri Dey,

Represented by his father and natural guardian Sri Nani Gopal Dey

.....Respondent/ Plaintiff

**JUDGEMENT**

1. The instant Misc Appeal is directed against the Order No. 07 dt. 11.06.2025 passed by the Ld. Civil Judge, (Jr. Div. ) 1<sup>st</sup> Court, Hooghly, Sadar in Title Suit No.499/2024

2. In the suit plaintiff / Respondent filed an application u/o 39 R-1 & 2 r/w section 151 of C.P Code for Ad interim / temporary injunction .Affter contested

hearing Ld. Civil Judge Junior Div. 1<sup>st</sup> Court, Hooghly, Sadar was pleased to pass an order allowing the application for temporary injunction restraining the Appellants / defendants from disturbing peaceful possession of the plaintiff's/ respondent in the suit property till disposal of the suit.

3. Being aggrieved and dissatisfied with the order passed by the Ld. Trial court, the Appellants/ Defendants have preferred the instant appeal before this court on the following grounds :-

- (i) That the Ld. trial court erred in law and in facts in passing the aforesaid order.
- (ii) That the Ld. trial court has committed wrong in holding the prima facie case of the parties and failed to appreciate the contents of the written statement and counter claim.
- (iii) That the Ld. trial court acted illegally and with material irregularity in granting temporary injunction.
- (iv) That the Ld. trial court failed to appreciate the title and possession of the Defendants and passed an order which is not sustainable in law.
- (v) That the Ld. Trial court has failed to consider prima facie case and balance of convenience and inconvenience which was in favour of the Defendants.
- (vi) That the Ld trial court failed to appreciate and consider the documents filed by the appellants/ defendants and came to an erroneous findings.
- (vii) That the impugned order is irregular and against the provision of law and the same is liable to be set aside.

#### **POINT FOR CONSIDERATION**

Whether the impugned order passed by the Ld. Civil Judge , Junior Division, 1<sup>st</sup> Court, Hooghly, Sadar is justified or required any interference by this court.

**DECISION WITH REASONS**

4. Respondent/ Plaintiff initiated Title Suit bearing no.499/2024 against the appellants/ defendants before the learned Civil Judge (Jr. Divn), 1<sup>st</sup> Court, Hooghly, Sadar for declaration of title and permanent injunction. According to the respondent/plaintiff, the property in dispute originally belonged to Sabitri Dey, predecessor of the parties. During her lifetime, one of her sons Dulal Chandra Dey died intestate leaving behind his wife Sabita Dey, the appellant no.1 and one daughter Kalyani Dey as his legal heirs and successors. According to the respondent/plaintiff, said Sabitri Dey during her lifetime executed a deed of gift in favour of minor Niladri Dey, her grandson and said gift was accepted by Nanigopal Dey as father and natural guardian of minor Niladri Dey. Be it mentioned here that Nanigopal Dey, is one of the sons of Sabitri Dey. It is also the case of the respondent that Sabitri Dey during her lifetime executed a Will in respect of the entire suit property in favour of Nanigopal Dey and after demise of Sabitri Dey, said Nanigopal Dey initiated a probate proceeding before the learned District Delegate, Hooghly in respect of the last Will of the deceased Sabitri Dey dated 03.12.2019. According to the respondent/plaintiff, the appellants are disturbing peaceful possession of the respondent in the suit property and also creating nuisance by dumping garbage in the suit property.

5. On the other hand, the appellants being the defendants challenged the suit and the injunction application by filing written statement and written objection, wherein they specifically stated that Sabitri Dey during her lifetime never executed any deed of gift in favour of minor Niladri Dey and any Will in favour of Nanigopal Dey. They further contended that during lifetime of Sabitri Dey, the plaintiff did not disclose about the execution of deed of gift by Sabitri Dey in favour of Niladri Dey or anything about the execution of Will. The appellants/defendants by filing another suit being Title Suit no.44/2025 before the learned Civil Judge (Sr. Divn.), 1<sup>st</sup> Court, Hooghly, Sadar prayed for partition in respect of the suit property against the present respondent and other co-sharers of the suit property and in the said suit, they also challenged the alleged deed of gift dated 21.02.2023 stands in favour of the present respondent. According to the appellant, suit property originally belonged to Sabitri Dey who died intestate

leaving behind her two sons Ratan Dey and Nanigopal Dey and also the legal heirs of her predeceased son Dulal Chandra Dey who all are possessing the suit property as co-sharers.

**6.** It is well settled that in order to obtain an order of injunction the party who seeks for grant of such injunction has to prove that he has made out a prima case to go to trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. It is equally settled that when a party fails to prove prima facie case to go to trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience in his favour and would suffer irreparable loss and injury if no order of injunction is granted in his favour. Prima facie case is a substantial question raised bonafide which needs investigation and a decision on merit. the court should be satisfied that there is a serious question to be tried at the hearing and there is a probability of plaintiff obtaining the relief at the conclusion of trial on the basis of the materials placed before the court. Prima facie case is not be confused with prima facie title which has to be establish on evidence at the trial. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction, the court further has to satisfy that non interference by the court would result irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury means injury which is substantial and could never be adequately remedied by damages, injury which can not possibly be repaired. Such injury must be a material one that can not be compensated by way of damages.

**7.** The plaintiff is also required to prove that there is the balance of convenience is in his favour i.e the comparative mischief, hardship or inconvenience which is likely to be caused to the plaintiff if the injunction is refused. Balance of convenience does not imply that the balance would be on one side and not in favour of the other. The court must assess balance between the parties and take into consideration whether withholding the injunction will be greater than that

which is likely to arise from granting it when all the above three parameters exists simultaneously, the court would be under a bounden duty to grant temporary injunction to meet the ends of justice.

**8.** On perusal of the plaint and written statement, I find that admittedly the suit property originally belonged to Sabatri Dey. It is also the admitted fact that appellant no.1 Ratan Dey and respondent Nanigopal Dey are the sons of the deceased Sabitri Dey and the respondent no.2 Sabita Dey is the wife of Dulal Chandra Dey, predeceased son of Sabitri Dey. According to the plaintiff/respondent Sabitri Dey during her lifetime executed a Will in favour of Nanigopal Dey in the year 2019 and said Sabitri Dey also executed a deed of gift in favour of minor Ninadri Dey in the year 2023. From the documents filed by the appellants, I also find that said deed of gift has been challenged by the appellants in subsequent suit for partition pending before the learned Civil Judge (Sr. Divn.), 1<sup>st</sup> Court, Hooghly, Sadar which is registered as Title Suit no.44/2025. From the averments made by the parties in their respective pleadings, it appears to me prima facie that both the parties have been possessing the suit property but on perusal of the plaint, I find that the plaintiff suppressed the above facts and did not pray for any relief of eviction and recovery of possession. There is no dispute that the appellants are the legal heirs of the deceased Sabitri Dey. From the averments of the plaintiff/respondent made in the plaint, I find that he deliberately suppressed the fact that a probate proceeding was initiated by Nanigopal Dey in respect of the last Will of Sabitri Dey dated 03.12.2019 which was registered as Act XXXIX case no.35/2024 before the learned District Judge, Hooghly. From the conduct of the plaintiff/respondent, it is very much clear that he did not come before the court with clean hands for getting equitable relief like injunction.

**9.** Having regards to the rival contentions it appears to me clearly that there are several issues regarding title and possession of the parties which requires to be adjudicated during trial. At this stage in order to protect the interest of the parties it would be just and proper to pass an order directing both the parties to maintain status quo in respect of the nature, character and their possession in the suit property till disposal of the suit by modifying the impugned order passed by the Ld. Trial court.

Hence, the instant Misc Appeal appears to me has merit and should be allowed.

Memo of appeal is correctly stamped.

Hence, it is,

**ORDERED**

that the instant Misc Appeal being no. 88 of 2025 filed at the instance of the appellants/defendants is **allowed on contest** without cost.

Order No. 07 dt. 11.06.2025 passed by the Ld. Civil Judge (Jr. Div), 1<sup>st</sup> Court, Hooghly in connection with Title Suit no.499/2024 is modified.

Both the parties are directed to maintain status quo in respect of the nature, character and possession of the suit property, as on date, till disposal of the suit.

Let a copy of this judgement be forwarded to the Ld. Civil Judge (Jr. div), 1<sup>st</sup> Court, Hooghly, Sadar at once for information and necessary action.

Instant Appeal is thus disposed of.

Note in the register.

D/C

Addl. District Judge  
1<sup>st</sup> Court, Chinsurah

(Rintu Sur)  
Additional District Judge  
1<sup>st</sup> Court, Chinsurah