

Order No. 04 dated 02.5.25

Today is fixed for hearing of the injunction petition filed by the appellant.

Petitioner files hazira.

The record is now taken up for hearing of the said petition kept in the instant record after ascertaining that no caveat has been lodged till date by the respondent in this matter.

Ld Advocate while moving the said petition filed under Order 39 Rule 1 and 2 read with sec. 151 of the CPC praying for ad interim injunction drew the attention of the following facts :

The Appellant being the plaintiff in the trial court of Id. Civil Judge (Jr. Divn.) 1st Court, Serampore had filed a suit for declaration and injunction being T.S. No. 187/2025 against the defendants therein wherein the case of the plaintiff was that he was a joint tenant with respect to a shop room along with his elder brother Sanjay Saha under the predecessor-in-interests of the defendants Nos. 4 to 6 and was running an electrical shop since the year 1996 in this scheduled B property mentioned in the plaint filed by the plaintiff before the Id trial court. Thereafter, the developer being defendant Nos. 1 to 3 in 2020-21 and the present owners/landlord of the said property being defendant Nos. 4 to 6 entered into a development agreement and subsequent thereto gave a proposal to the plaintiff and his brother that they would be re-allotted the scheduled B shop room of about 72 sq. ft. after re-building of the suit property and gave similar proposals to the other existing shop owners in the suit property as per their agreed terms. However, the elder brother of the plaintiff died before execution of this agreement and ultimately the agreement was made by the appellant and the widow of his elder brother with the owners and developers. The developer has already handed over all the shop rooms to the existing tenants after re-building the suit property but have not handed over the shop room of the plaintiff and his

Contd..next page..

Contd.

Misc. Appeal – 28/2025

J.O. Code : WB01302

Order No. 04 dated 02.5.25

sister-in-law. When the plaintiff demanded the possession of the shop room from the owners/landlord as agreed between them after the re-building, they demanded a sum of Rs. 55000/- from him and he came to know that his sister-in-law had sold off her share in the said tenancy to the owners. The plaintiff are in jural possession of their suit room although they have not been given actual physical possession of the same by the owners and developers i.e. the defendants.

Ld Advocate submitted that the appellant fears that the suit room may be sold of by the defendant to any third party or that the widow of the brother of the appellant might make any settlement with the defendants with respect to the suit room behind the back of the appellant who is a joint tenant of the suit room. He argued that the balance of convenience and inconvenience is in favour of the appellant and that if the injunction order was not passed in favour of the appellant, the owners might alienate the suit room or induct another tenant causing him irreparable loss and injury. He prayed for grant of injunction upon the said suit room.

Heard. Perused the filed documents and the materials in the instant record. Considered.

It appears from perusal of the filed photocopy of the two rent receipts of the suit room of December 2018 & 2019 that it is issued in the name of S.S. Electric. The filed photocopies of the subscriptions of Hind Motor Merchants Welfare Association show that the suit room is in the name of the appellant-plaintiff under the said firm name. The filed copy of the trade licence of the suit room shows that the proprietor of the said firm is the appellant Sujit Saha and the filed photocopy of the Welfare Association shows that the said firm is co-owned by the appellant and his sister-in-law. The filed copy of the tenancy agreement shows that the suit room is under the joint tenancy of the appellant as well as his late brother Sanjay Saha. Thus, it is apparent from the above that the appellant i.e. the present petitioner is a joint tenant of the said suit room. The filed copy of the notarised agreement between the appellant and the respondents shows that an agreement was made between the respondent Nos. 1 to 3 and the appellant and his sister-in-law i.e. the widow of his deceased brother to the effect that the appellant and his sister-in-law would get back the possession of their jointly tenanted shop room after the said respondents re-build the suit property according to their terms of development of the suit property with the owners i.e. respondent Nos. 4 to 6. It is apparent from the terms of the agreement that the appellant along with his sister-in-law has surrendered their tenancy right in favour of the defendants in lieu of getting a shop room of 72 sq. ft. in the newly constructed suit property from the respondents who would transfer the said room to them by executing proper deed of transfer. It is evident from the submission of the ld Advocate of the appellant that the construction of the suit property has already been done but the appellant has not got back the possession of the promised suit room. In such a scenario, the apprehension of the appellant that the said room would be handed over to a third party is justified. The appellant thus has been able to demonstrate that he has a prima facie

Contd..next page..

Contd.

Misc. Appeal – 28/2025

J.O. Code : WB01302

Order No. 04 dated 02.5.25

case and that the balance of convenience and inconvenience in grant of the injunction is in his favour and that the refusal of the same would lead to irreparable loss and injury to him.

Considering the matter, this court is of the opinion that the petitioner-appellant has been able to show a prima facie case of grant of ad-interim injunction upon the scheduled property, which considering the exigency of the matter, would be defeated by delay. Hence, the ad-interim prayer of the petitioner is herein allowed.

The petitioner/appellant Sujit Saha does get an ad-interim injunction upon the suit scheduled B property mentioned in his plaint.

The respondents and their men and agents are hereby directed not to alienate the suit property to any third party or make any settlement with the respondent No. 7 Smt. Mousumi Saha without the knowledge and consent of the petitioner.

This ad-interim injunction would be valid till the final disposal of the injunction petition to be heard in presence of both the parties.

Appellant is directed to comply with the provisions of Order 39 Rule 3 CPC at once.

Appellant to file requisites of the present appeal at once.

Issue requisites, once filed.

Call for TCR at once.

To date (16.6.25) for appearance of parties and receipt of TCR.

Dict. & corr. By me.

Sd/-
Addl. District Judge, 2nd Court,
Serampore, Hooghly.

Sd/-
Addl. District Judge, 2nd Court,
Serampore, Hooghly.

