

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE  
1ST COURT, SERAMPORE**

**Present: Sri Manoj Kumar Rai,  
Additional District Judge,  
1<sup>st</sup> Court, Serampore, Hooghly.**

**Miscellaneous Appeal No. 47 of 2023**

**Sri Milan Singha Roy**

**.....Appellant**

**Versus**

**Sri Nandalal Singha Roy and Others**

**.....Respondents**

**Order No. 02 dated 15.09.2023**

This is a misc. appeal filed by the appellant being aggrieved by and dissatisfied with order No. 02 dated 05.09.2023 made by the Ld. Civil Judge (Junior Division), Additional Court, Serampore in Title Suit No. 509 of 2023. The appeal has been filed within the period of limitation. Register the same as Miscellaneous Appeal.

The instant appeal is taken up for hearing on the point of admission. I have heard the Ld. Advocate for the appellant, perused the impugned order and memorandum of appeal. Considered. Let the appeal be admitted. Call for L.C.R. To **28.11.2023** for S.R., appearance and L.C.R.

Appellant has also files an application under Order XXXIX Rules 1 and 2 read with section 151 of C.P.C., praying for stay the operation of the impugned order on the ground stated therein and moves the same.

There is no caveat as per endorsement of B.C.-I on the application for injunction.

Accordingly, the injunction application is taken up for hearing

Heard the Ld. Lawyer. Perused the memorandum of appeal, application under Order XXXIX Rules 1 and 2 read with section 151 of C.P.C., certified copy of the impugned order and documents filed on behalf of the petitioner by firstly. Considered.

Issue notice upon the respondents directing them to show cause within fifteen days on receipt thereof as to why the prayer for temporary injunction as made in the instant application should not be allowed.

The appellant's case, in brief, is that the suit property was the ancestral property of the parties. Appellant and respondent No. 2 are sons of respondent No. 1 and respondent No. 3 is son of respondent No. 2. With passage of time the property devolved upon respondent No. 1 and by an amicable family settlement, the respondent No. 1 executed an unregistered deed of family settlement and the suit property was allotted in favour of appellant and another property was allotted in favour of respondent No. 2. The appellant took possession of the suit property on 30.12.2022 and he is in possession of the same and carries on business of ration dealer shop from the suit property. Suddenly, the respondent No. 2 came to the suit property on 23.08.2023 claiming that suit property belongs to his

minor son. The appellant became perplexed and after searching online on 23.08.2023, he found that the respondent No. 1 executed a deed of gift in favour of respondent No. 3 on 27.07.2023. The said deed was registered from the office of D.S.R.-II, Hooghly. Since the suit property is ancestral property and the parties belong to Mitakshara School of Hindu Law, the respondent No. 1 cannot transfer the suit property by depriving the appellant. On 05.09.2023 respondents came to the suit property in the morning, used filthy languages and tried to throw away the articles of ration shop. However, the appellant somehow rescued the same and lodged general diary with Jangipara P.S. Hence, this petition for injunction.

It appears from unregistered deed of settlement dated 30.12.2022 that the respondent No. 1 has settled the suit property in favour of the appellant. It further transpires from letter issued by Sub Divisional Controller (F&S), Serampore that F.P.S. dealership on compassionate ground was allotted to the appellant by letter dated 05.06.2023 for functioning as F.P.S. dealer in the suit property. It is further apparent that a license has been issued by the competent authority on 14.07.2023 for carrying on business in respect of a fair price shop for distribution of essential commodities to the ration card holders under Public Distribution System to the appellant. It further transpires from copy of gift deed that on 27.07.2023 the respondent No. 1 has gifted the suit property in favour of son of respondent No. 2, being respondent No. 3 in this appeal and from xerox copy of documents it is further apparent that the said plot has been recorded in the name of respondent No. 3. It is also apparent that a diary was lodged by appellant on 05.09.2023 regarding threats given by respondent No. 2. From the documents submitted on behalf of appellant it is clear that the appellant has been carrying on business of ration shop dealer in the suit property after obtaining license from competent authority with permission of respondent No. 1. It is apparent that he is in possession of the suit property at present and as such, he should not be evicted without due process of law. I am of the view that the appellant has been able to make out a prima facie case.

Balance of convenience and inconvenience is in favour of granting the injunction. Any delay in granting the injunction will cause irreparable loss and injury to the appellant, which should not be compensated by any amount of compensation in terms of money. Hence, the prayer for ad interim order of injunction under Order 39 Rule 1 and 2 read with section 151 C.P.C. is hereby allowed ex parte without cost.

The respondents are restrained by an ad interim order of injunction from evicting the appellant from the suit property except in due process of law and are also restrained from creating any disturbance in peaceful running of the business of the appellant in the suit property till 12.10.2023.

The appellant to comply with the provisions of Order XXXIX Rule 3(a) & (b) of C.P.C.

The application under Order XXXIX Rules 1 and 2 read with section 151 of C.P. Code is, thus, disposed of.

Dictated & corrected by me.

Sd/- (Sri M.K. Rai)

A.S.J.

Sd/- (Sri M.K. Rai)

Additional Sessions Judge,  
1<sup>st</sup> Court, Serampore