

Title Suit No.57 of 2024

Order No. 19 dated 10.06.2026

Today is fixed for clarification and passing order in respect of the injunction application u/Or 39 r 1 & 2, and under Section 151 of CPC.

Plaintiff filed hazira .

Defendants filed hazira.

This is the suit for declaration, partition as well as permanent injunction.

Heard the Ld. Advocate of the plaintiffs who submitted that one Santosh Kumar Sit was the co-sharer having 50% share in the suit plot No. 503. He transferred one 1 3/5 satak out of his 50% share to Chandi Charan Kanrar by virtue of the registered deed of sale being No. 3164 dated 24.08.1974. he again sold 1 satak by virtue of the registered deed of sale being No. 610 to Chandi Charan Kanrar. Chandi Charan Kanrar gifted his property by virtue of the registered deed of gift being No. 1989 to his two sons, Sujoy and Susanta in equal share.

One Gopal Ch. Sit was the co-sharer having ½ share in suit plot No. 508. He died leaving behind his three sons as his legal heirs and successors. The rest 50% share was recorded in the name of Nasiram Sit. Suresh Sit died leaving behind his two sons, Sambu Sit and Arun Sit and wife Lilabati Sit as his legal heir and successor. Adhir Sit and legal heirs of Suresh Sit transferred 1 Satak to Chandi Charan by virtue of the registered deed of sale being No. 2120/1971. Again Adhir Chandra transferred 3 satak in plot No. 508 to Chandi Charan by virtue of the registered deed of sale being No. 3036 on 07.08.1974. The son of Nusiram Sit transferred 6 Satak in favour of Chandi Charan by virtue of the registered deed of sale being No. 2211/1971. As such Chandi Charan became the owner of 10 satak in plot No. 508. His legal heirs became the co-sharer in respect of the suit property. The plaintiff No. 1 also got the share of his sister by virtue of the registered deed of gift. The plaintiff No. 7 also became the co-sharer by way of inheritance in respect of the suit property. The suit property has not been partitioned by metes and bounds and is an undivided and undemarcated one. On 20.12.2023 the plaintiffs requested the defendants for partition of the property but they refused to do so. On 25.05.2024 the defendants stated that they will raise pucca structure and will change the nature and character of the property. On being protested they threatened the plaintiff with dire consequences. On 28.05.2024 they assembled building material for raising construction. The plaintiffs, therefore, prayed for an order of temporary injunction against the defendant Nos. 1, 2, 3, 4 & 5 restraining them from crating disturbance, forcibly dispossessing the plaintiffs from the suit property as well as from changing the nature and character of the suit property in any manner by making any kind of construction over any portion of the same.

Ld. Advocate for the defendant Nos. 1 to 5 raised vehement objection stating that the suit plot No. 503 belonged to Santosh Sit having ½ share, Sital Ch. Ghosh having ¼ th share and Panchanan Bakuli has 1/4th share. Panchanan Bakuli and Sital Ch. Ghosh transferred their share to Rishikesh Jamri by virtue of the registered deed of sale being no. 5630 dated 08.07.1958. The plot No. 508 was divided into two kahtian being khatian No. 295 and 213. Nasiram Sit was the co-sharer having ½ share in plot No. 508, Khatian No. 213. Bijay, Suresh and Adhir were the co-sharer on plot No. 508 under Khatian No. 295. The legal heir of Nasiram transferred his share to Rishikesh Jhamri by virtue of the registered deed of sale. Rishikesh Jhamri died leaving behind to two son, plaintiff No. 7 and defendant No. 1, three daughters, namely, Bela, Rina, Mina and wife and his legal heirs and successors. Bela, Mina, Rina

and Nirmala transferred 8 satak in plot No. 503 to the defendant No. 1 by virtue of the two registered deeds of gift. The defendant No. 1 transferred 5.375 satak in plot no. 503 to his son by virtue of the registered deed of gift.

Bela, Mina, Rina and Nirmala transferred 4.5 satak in plot No. 508 to the defendant No. 1 by virtue of the registered deed of sale. Nirmala Transferred her rest share to Dipendu. As such Dipendu became the co-sharer in respect of the suit property. There are other co-sharer in the suit property. The suit property was orally partitioned and the defendant No. 1 was in possession of his share. On 01.04.2024 he was digging soil for raising construction. The foundation of the building was complete. Now the plaintiffs are creating obstruction in raising the pucca structure. There are other co-sharers who are not made party in this case.

Heard. Considered.

After perusal of the record it is seen that the plaintiffs have sought for partition against the defendants. From the evidence on record it is crystal clear that the defendant No. 1 who is the admitted co-sharer who transferred his share in favour of his son, Dipendu Japhri by virtue of the registered deeds of gift being Nos. 051001553/2019 and 051001797/2021. As such he is also the co-sharer in the suit property and a necessary party in the suit.

In 2016 (2) ICC Cal (1) and Ashish Roy & Ors Vs. Rita Sil and Ors, the Hon'ble High Court has duly observed that when one of the admitted co-sharer transferred a portion of his share in the suit property, the purchaser automatically became co-share by virtue of purchase and as such in the absence of those co-sharer the suit for partition cannot be held to be maintainable.

As such without impleading him as a necessary party in the suit, the injunction application is not maintainable in this partition case. So this Court is not inclined to grant injunction to the plaintiff against the defendants who are also the co-sharers in the suit property.

Upon a close inspection to the matter and considering the entire facts and circumstances of the case, on perusal of the injunction application as well as affidavit and relevant documents submission of both the parties, it is found out that there is no prima facie case of the plaintiff, balance of convenience and inconvenience does not weigh in favour of the plaintiff. As such this Court is not inclined in allowing the injunction application. Further the Court thinks that without the order of injunction the plaintiff shall not suffer irreparable loss and injury. In view of the above circumstances prayer for temporary injunction is rejected.

Hence, it is

ORDERED

The application u/Or 39 r 1 & 2 CPC r/w section 151 CPC is rejected and disposed of on consent without any order as to cost.

To **21.08.2026** for framing of issues.

D/c by me

CJ

**Civil Judge (Jr Divn)
Amta, Howrah**