

High Court Form No. (J) 2
Heading Of Judgment In An Original Suit/Case

District:- Howrah

**In the Court of the Additional District Judge, 2nd Court,
Uluberia**

Present :Atrayee Manna Chowdhury,
Additional District Judge,
2nd Court, Uluberia
J.O Code - WB00848

Friday, 24th day of July, 2026

Misc. Appeal No. 28/22
C.I.S No.28 of 2022
CNR No. WBHW09 001105 2022

Panab Das and OthersAppellant.

-Versus-

HBS Logistics Park Pvt. Ltd.Respondent.

This appeal coming on for final hearing on 20.07.2026 in the
presence of

Sri Sisir Kumar Das and
Smt. Snehasree Das Advocate for the Appellants

AND

Sri Samir Kanti Guha and
Sri Manish Kumar Chaule Advocate for the Respondent

-and having stood for consideration to this day, the Court delivered the following judgment.

J U D G E M E N T

This miscellaneous appeal has been preferred challenging Order No. 2 dated 18.06.2022 passed by the Learned Civil Judge (Senior Division), Uluberia in Title Suit No. 62 of 2022 whereby the learned Trial Court refused the plaintiffs' prayer for grant of an ad interim order of injunction in an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. The appeal was presented on 28.07.2022.

The case record of T.S. 62/2022 has been received from the trial court and the same has been kept with the record.

The contentions of the parties were heard at length. On the basis of such contentions I find that the points for determination involved are as follows:-

P O I N T S F O R D E T E R M I N A T I O N

1. Has the Ld. Trial Judge erred in appreciating law and fact at the time of passing the impugned order ?
2. Does the impugned order suffer from some illegality or infirmity ?

Now, I shall embark upon the venture of deciding the points for determination on the basis of the materials lying in the record.

While doing so, I find that application under Order 39 Rule 1 and 2 read with section 151 of CPC as preferred by the appellants is pending for disposal. That prayer was moved on 26.08.2022 on an *ad interim* basis whereby respondent was restrained from changing the nature and character of the suit property and maintain status quo till 15.09.2022. That order has been extended from time to time but it has not been disposed as yet. That being the position the said petition shall be disposed along with the instant appeal.

DECISION WITH REASONS

Point no.-s 1 and 2:-

1. For the sake of brevity and convenience both the points are taken up together for consideration.

2. Perused all materials lying in the case record of T.S. 62/2022 as well as this instant memorandum of appeal.

3. This appeal has been preferred on 28.07.2022 assailing the order dated 18.06.2022 whereby the learned Civil Judge (Senior Division), 1st Court, Uluberia, refused to grant temporary injunction in connection with Title Suit No. 62 of 2022.

4. The appellants instituted the suit for declaration, partition and permanent injunction alleging that the suit property remained joint and unpartitioned amongst the co-sharers and that the respondent company, claiming through certain purchasers, was attempting to interfere with their possession, to grab excess land and to alter the nature and character of the suit property. Simultaneously, they prayed for an *ad interim* injunction

restraining the respondent from disturbing their possession and from changing the nature and character of the suit property pending disposal of the application for temporary injunction.

5. The learned Trial Judge, upon consideration declined to grant an ad interim injunction. The learned Judge observed that although certain revenue records and deeds had been produced, the plaintiffs had failed to establish, even prima facie, that they were in possession of the suit property according to their alleged shares or that they possessed a legal right entitling them to an ex parte order of injunction. Consequently, the learned Trial Court held that the essential requirements of a prima facie case and balance of convenience were not satisfied and refused the prayer for ad interim injunction while directing issuance of notice upon the defendant.

6. Assailing the said order, the appellants contend that the learned Trial Court failed to appreciate that the dispute arises out of an alleged undivided joint property and that preservation of the property till disposal of the injunction application was necessary. According to the appellants, refusal to grant ad interim protection exposed the property to irreversible changes and defeated the very object of the suit.

7. The respondent entered appearance in the appeal and filed written objection. It has been contended that the appellants suppressed material facts relating to earlier transfers of portions of the suit property. According to the respondent, after the death of Bhushan Chandra Das, his widow transferred land in favour of Prabir Das, who subsequently acquired further portions

of the property and thereafter transferred land to the respondent company. It is further alleged that the respondent company is a bona fide purchaser and that, instead, it is the company which has been cheated, the appellants having instituted the present litigation in an attempt to further defeat the lawful rights acquired by the respondent through registered conveyances.

8. The appellate jurisdiction against an order passed under Order XXXIX Rules 1 and 2 CPC is supervisory in nature. Interference is warranted only when the discretion exercised by the Trial Court is shown to be arbitrary, capricious, perverse or based upon an erroneous application of settled principles governing grant of temporary injunction. If the Trial Court has exercised its discretion upon consideration of the available materials, the appellate Court ordinarily does not substitute its own view merely because another view is possible.

9. In the present case, the learned Trial Court recorded reasons for declining ex parte protection. It specifically found that the plaintiffs had not been able to establish a prima facie case regarding their existing possession over the suit property so as to justify grant of an ad interim injunction without hearing the opposite party. The Trial Court further found that the balance of convenience did not lie in favour of granting such ex parte protection. These findings cannot be said, on the materials then available, to be arbitrary or wholly unsupported by the record. The order merely refused ad interim relief and directed issuance of notice to the defendant for consideration of the application for temporary injunction upon contest. Such exercise of discretion

does not call for interference merely because the appellants assert a different appreciation of the facts.

10. However, during the pendency of the present appeal, a significant subsequent event has taken place. It has been brought to the notice of this Court that by Order No. 19 dated 10.09.2025, Title Suit No. 62 of 2022 itself has been dismissed for default. Once the suit from which the application for temporary injunction arose has ceased to remain pending, the interlocutory application and every challenge concerning refusal of ad interim protection lose their independent existence. The relief claimed in the present appeal was entirely ancillary to the pendency of the suit. Upon dismissal of the suit for default, no effective order regarding temporary or ad interim injunction can survive independently. The appeal has, therefore, become infructuous.

It is made clear that this Court has not expressed any opinion on the merits of the rival claims of title or possession. In the event the suit is restored in accordance with law by a competent Court, it shall be open to the parties to seek appropriate interim relief afresh, which shall be considered independently and on its own merits without being influenced by any observation made in this judgment.

11. That being the position, both the points for determination are accordingly decided against the appellants. The points for determination being thus decided the Miscellaneous Appeal stands dismissed as having become infructuous.

12. Goes without saying that the prayer under order 39 rule 1 and 2 of CPC submitted before this court by the appellants are also liable to be rejected.

13. The memorandum of appeal has been valued properly and the court fee paid thereon is correct.

Hence, it is,

ORDERED

The Miscellaneous Appeal is dismissed as having become infructuous in view of the dismissal of Title Suit No. 62 of 2022 for default by Order No. 19 dated 10.09.2025.

The impugned order dated 18.06.2022 does not call for interference.

There shall be no order as to costs.

The appeal is, accordingly, disposed of.

Let a copy of this judgment along with the case record of Title Suit No. 62/22 be sent to the Court of Ld. Civil Judge (Senior Division), 1st Court, Uluberia for information and necessary action.

Dictated and rectified by me

Addl. Dist. Judge,
2nd Court, Uluberia

Additional District Judge,
2nd Court, Uluberia.