

High Court Form No. (J) 2.

Heading Of Judgment In An Original Suit/Case

District :Howrah
In the Court Of :Additional District & Sessions Judge,
II Court, Uluberia, Howrah.
Present :Atrayee Manna Chowdhury

12th day of June, 2026

Misc. Appeal No.09/23
C.I.S. No. 09/2023
C.N.R. No.WBHW09-001601 2023

Rumpa Ghosh ...Appellant/Plaintiff

-Versus-

Rakhi Gosh and another ...Respondents/Defendants

This appeal coming on for final hearing on 04.06.2026 in the presence of

Smt. Reshmi Gupta,
Smt. Nilanjana Bhunia Advocate for the Appellant.

-Versus-

Sri Diparghya Maity Advocate for the Respondents.

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

JUDGMENT

This is a miscellaneous appeal preferred on 18.10.2023 against the Order dated 13.10.2023 passed by Ld. Civil Judge, (Senior Division), Uluberia in Title Suit No. 203/2023.

Passing the impugned order Ld. Trial Court refused the prayer for ad-interim temporary injunction. Preferring this appeal the appellant sought to set aside the impugned order.

From the record it appears that an application for temporary injunction submitted by the appellant in this appeal is pending for final adjudication. The same is taken up along with this Appeal for disposal.

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:-

POINTS FOR DETERMINATION

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.

DECISION WITH REASONS

Point no.-s 1 and 2:-

1. For the sake of convenience both the points are taken up together for adjudication.

2. This Miscellaneous Appeal is directed against Order No. 02 dated 13.10.2023 passed by the learned Civil Judge (Senior Division), Uluberia in Title Suit No. 203 of 2023 whereby the learned Trial Court refused the plaintiff's prayer for ad interim injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

3. The appellant/plaintiff instituted the suit seeking, inter alia, declaration, partition and permanent injunction in respect of the suit property. The specific case of the plaintiff is that the suit property originally belonged to the predecessor-in-interest of the parties, namely their father Rabindranath Ghosh. It is alleged that a deed of gift purportedly executed by the father in favour of defendant no.1 was obtained by practising fraud and that the said deed is not binding upon the plaintiff. The plaintiff further claims that she and the defendants are co-sharers having undivided interest in the suit property and that during pendency of the suit the defendants are attempting to alter the nature and character of the property.

4. Being dissatisfied with the order refusing ad interim injunction, the plaintiff preferred the present appeal. By Order No. 2 dated 19.10.2023 this Court granted an ad interim order directing the parties to maintain status quo in respect of the suit property pending consideration of the injunction matter.

5. I have heard the learned advocates for the parties and carefully perused the materials on record.

6. The principal reason assigned by the learned Trial Court for refusing ad interim injunction is that the deed of gift had allegedly been executed in October, 2022 whereas the father died in December, 2022 and, therefore, there was no urgency warranting grant of ad interim relief. The learned Trial Court also held that the balance of convenience and inconvenience did not favour the plaintiff.

7. At the present stage, the Court is not required to adjudicate finally upon the validity or otherwise of the impugned

deed of gift. The question whether the deed was executed voluntarily, whether it was procured by fraud, and whether it is binding upon the plaintiff are matters to be determined upon evidence during trial. The Court is only required to ascertain whether the plaintiff has been able to establish a prima facie case, balance of convenience and likelihood of irreparable injury.

8. The pleadings disclose that the plaintiff claims a share in the suit property and has sought partition thereof. It is also not in dispute that the challenge to the deed of gift constitutes one of the principal issues involved in the suit. If during pendency of the suit the nature and character of the property are altered or third-party interests are created, the subject matter of the litigation may be seriously prejudiced and the rights of the parties may become more complicated. In a suit involving rival claims over immovable property and questions regarding entitlement of co-sharers, preservation of the property until adjudication ordinarily advances the ends of justice.

9. The materials available at this stage indicate existence of substantial and triable issues requiring adjudication. Consequently, a prima facie case cannot be said to be absent. Further, preservation of the suit property during pendency of the suit would cause no substantial prejudice to either party, whereas refusal of protection may result in alteration of the property and multiplicity of proceedings. The balance of convenience therefore leans in favour of maintaining the property in its existing condition. Irreparable injury may also ensue if the property is altered before adjudication of the parties' respective rights.

10. This Court is therefore of the opinion that the learned Trial Court was not justified in refusing ad interim protection altogether.

11. Accordingly, the appeal succeeds.

Hence, it is,

ORDERED

The Misc. Appeal is hereby allowed on contest without any order as to costs.

The impugned Order No. 02 dated 13.10.2023 passed by the Learned Civil Judge (Senior Division), Uluberia in T.S. No. 203 of 2023 is hereby set aside.

The ad interim order of status quo already granted by this Court is confirmed and shall continue till disposal of the application under Order XXXIX Rules 1 and 2 CPC by the learned Trial Court.

All parties are directed to maintain status quo in respect of the nature, character, possession, mode and manner of user of the suit property until disposal of the injunction application.

The application for temporary injunction submitted by the appellant in this appeal stands accordingly disposed.

Let a copy of this judgment be sent to the Court of Ld. Civil Judge (Senior Division), Uluberia, for information and necessary action.

Dictated and rectified by me

Additional District Judge
2nd Court, Uluberia, Howrah.

Additional District Judge
2nd Court, Uluberia, Howrah.
JO Code: WB00848.

