

Misc Appeal No.38 of 2025
C.N.R. No. WBJP01-004145-2025

Order No. 02, dated – 29.10.2025,

The instant Misc Appeal is taken up for hearing on the point of admission.

Hazira has been filed on behalf of the appellant through his Ld. Advocate.

Ld. Advocate appearing on behalf of the appellant has moved the application under Order 39 Rule 1 & 2 read with Sec.151 of C.P.C. in the form of ad-interim injunction in connection with this Misc Appeal.

Before taking up the matter of ad-interim injunction, this court is inclined to take up the instant Appeal for admission hearing.

Upon perusal of the office report and the endorsement made by the office on the back side page of the cause title of the Memo of Appeal, it appears to this Court that the instant Appeal has been filed within time and the same has been duly stamped. Therefore, the Appeal is in order without any defect and the Appeal may be admitted.

Accordingly, the present Appeal is admitted.

Now the application for ad-interim injunction is taken up for hearing.

It is a case of the plaintiffs/ appellants herein that they are the lessee under the name and style “Indong Tea Company Pvt. Ltd.” under Government of West Bengal in respect of land measuring 1829.52 acres for the period of 30 years commencing from 30.06.1970 and subsequently, it has been extended by the lease dated 24th March, 2008 for further 30 years, whereas, the defendant No.1 is another lessee in respect of tea garden under the name and style as “Chulsa Tea Estate situated in the northern side of the plaintiffs’ tea garden and it has been alleged that the defendant No.1 had transferred the said tea garden to a third party i.e. Chulsa Tea Venture after encroaching 6.61 acres of land of plaintiff No.1 as mentioned in the schedule of the plaint. It is also the case of the plaintiffs/ appellants herein that they have transferred the said plot of land without following due clause of the lease as executed by the Government of West Bengal in their favour. Furthermore, this defendant/ respondent No.2 have encroached the portion of the Tea Garden under the name and style as “Indong Tea Company Pvt. Ltd.” during pendency of the suit being Title Suit No.20/1999 which has been filed by the plaintiff and the same is pending before the Ld. Civil Judge, Senior Division, Sadar Court, Jalpaiguri and during pendency of the suit, one application under Order 39 Rule 1 & 2 read with Sec.151 of C.P.C. has been filed before the Ld. Trial Court for restraining defendant No.1 & 2 from transferring alienating of their tea garden to any third party. However, that application has been contested by the defendant No.1 & 2 and the Ld. Trial Court has rejected that application under Order 39 Rule 1 & 2 read with Sec.151 of C.P.C. with imposing cost of Rs.50,000/-.

In the light of this contention, as above, Ld. Advocate appearing on behalf of the plaintiffs / appellants herein has submitted that there was a good prima facie case and balance of convenience and inconvenience was in favour of the plaintiffs/ appellants herein and they should be given a protection of restraining order in respect of the suit property by the Ld. Trial Court, but the Ld. Trial Court failed to appreciate that and also failed to consider that in case of denial of such granting ad-interim injunction, they would suffer irreparable loss and substantial injury. It has been further contended that challenging that impugned order of rejection of injunction, present Misc Appeal has been filed on behalf of the appellants/

plaintiffs and along with the present Misc Appeal, this ad-interim injunction application has been filed on their behalf for restraining the respondent/ defendant No.1 as sought for. With this contention, it has been submitted that there is a good prima facie case in their favour being owner of the tea garden in respect of the land in question as mentioned in the schedule of the plaint and also they have good balance of convenience and inconvenience in their favour arising out of that prima facie case and it has been submitted that if any restraining order is not passed, at this stage, the Misc Appeal will be frustrated since the disputed land in question as encroached by the defendant No.1, which has already been handed over, otherwise, this plaintiffs / appellants will suffer irreparable loss and substantial injury and necessary order may be passed in this regard.

Upon perusal of the application under Order 39 Rule 1 & 2 read with Sec.151 of C.P.C. and after going through the record and the list of documents as annexed with the application for injunction and also considering the submission of the Ld. Advocate appearing on behalf of the plaintiffs/ appellants herein, it appears to this Court that the instant suit being Title suit No.20/1999 has been filed on behalf of the plaintiffs/ appellants for the declaratory relief in respect of the schedule plots of land measuring 6.61 acres in respect of plot Nos.513, 515, 518 within Mouza Indog Tea Garden under P.S. Metelli in R.S Khatian No.1/1, Pargana-Uttar Maynaguri Touzi-158 along with a prayer for restraining the defendants by way of perpetual injunction upon the defendants /respondents herein or from trespassing into the schedule plots of land. Furthermore, during pendency of the suit plaintiffs / appellants herein have filed an application for injunction under Order 39 Rule 1 & 2 read with Sec.151 of C.P.C. with a prayer for restraining the defendants/ respondents herein from selling assigning transferring, encumbering, parting with possession or creating any third party interest in respect of Chulsa Tea Estate property and also not taking back possession thereof till disposal of the suit.

Ld. Trial Court has rejected this application after hearing both the sides with an observation as follows :-

“.....It appears that the balance of convenience and inconvenience is not in favour of the plaintiffs and the plaintiffs will not suffer irreparable loss and injury, if the injunction order as prayed for is not granted.

The injunction is an equitable relief same has to be disposed of on the basis of documents or the face value of documents. The plaintiffs failed to produce any document showing that the defendant No.1 entered into an agreement for sale with M/s Chulsa Tea Venture LLP to transfer the suit land. So, the plaintiffs have failed to prove prima facie case in support of injunction application. So, the prayer of the plaintiffs for ad-interim injunction is not justified and the same is liable to reject.”

At the time of rejection of this application, Ld. Trial Court has imposed cost of Rs.50,000/- upon this plaintiffs/ appellants herein.

Considering the issue in controversy as raised in this application under Order 39 Rule 1 & 2 read with sec.151 of C.P.C. through this ad-interim injunction application, it appears to this court that the relief has been sought for in connection with this Misc Appeal relates to 6.61 acres of land in respect of the schedule plots of land as mentioned in the schedule of the plaint. Allegation of encroachment by the defendants has been made by the plaintiffs, both in the plaint as well as in injunction application. However, for ascertaining such encroachment,

already Ld. Trial Court has passed an order for appointment of an Advocate commissioner and subsequently, on the basis of report of such Advocate Commissioner further order was passed for supply of name of survey commissioner or having knowledge of the theodolite survey and for that, the matter was referred to ADM and D.L.&L.R.O. vide order No.106 dated 27.08.2012 and that matter is still awaiting for disposal from the D.L.& L.R.O., as it appears from the record as placed before this court at the time of hearing of ad-interim injunction application.

Under the backdrop of this facts and circumstances of this case, at this stage without ascertaining that area of land under encroachment, it will not be justifiable for passing any order of ad-interim injunction in the form of restraining order in respect of the property which has been under control of defendant No.1. However, for the purpose of protection of the suit property, this Court is inclined to given direction upon the defendant No.1 & 2 not to create any third party interest in respect of the schedule plots of land as mentioned in the injunction application till disposal of this application as protective measure.

Ld. Advocate appearing on behalf of the appellants/ plaintiffs is directed to serve copy of Memo of Appeal along with injunction application upon the respondent / defendant No.1.

Requisites be filed in the mean time.

` Fix 12.12.2025 for S.R., A.D. and appearance.

Dictated & Corrected by me

District Judge, Jalpaiguri
(WB01135)

District Judge, Jalpaiguri
(WB01135)