

In the Court of the District Judge, Murshidabad

Present: Sri Partha Pratim Chakraborty
District Judge, Murshidabad
(JO-WB01240)

Title Appeal 21/2025

Order No. 02, dtd. 25.04.2025

Today the record is put up on the strength of put up petition along with a petition praying for hearing the injunction filed by the appellants.

Ld. Advocate for the appellants is present.

It appears from the record that the case is fixed for hearing on the point of admission.

Accordingly, on being moved by the learned Counsel, the matter is taken up for hearing on the point of admission.

Heard the Ld. Advocate for the appellants.

Perused the certified copy of the order under consideration.

The Order in question was passed by learned Civil Judge (Jr. Divn.), 2nd Court, Berhampore on 14.01.2025 in Title Suit No. 12/1999. This Appeal was filed on 29.03.2025 and 65 days were consumed for obtaining certified copy.

Therefore, it appears that the appeal has been filed within time.

Hence, this appeal is admitted.

Call for TCR.

Issue notice upon the respondents.

Requisites to be filed within 2 days.

Seen the Office Report that no caveat has been filed.

Hence, the application under Order 39 Rule 1 and 2, read with Section 151 of C.P.C is taken up for hearing.

Heard the Ld. Advocate for the appellants/defendants.

The Respondents/plaintiffs filed a suit being Title Suit No. 12/199 before the Court of Learned Civil Judge (Jr. Divn.), 2nd Court, Berhampore. Learned Trial Court vide impugned judgement dated 14.01.2025 allowed the said suit against the Appellants/defendants.

According to the Injunction Petition, supported by affidavit, the one of the original owners of the suit property, namely, Bimala Bala Mondal gifted her share over the suit property to Narad Kumar Mondal i.e. Appellant No. 1 by registered Deed of Gift begin No. 1935 dated 21.10.1995. Said Bimala Bala Mondal also sold her share over the suit property to Mamata Mondal (Appellant No. 2) by a registered deed of sale being No. 1931 dated 21.10,1995. Bimal Bala Mondal and Fani Bhusan Mondal jointly sold their share over the suit property to the appellants by a registered deed of sale begin No. 1936, dated 20.10.1995 and thus the appellants became the owners of the suit properties and they are possessing the same. The Plaintiffs/Respondents Nos. 1 to 5 alleged that the impugned deeds were procured by misrepresentation. However, Ld. Trial Court believed the Plaintiffs' case and set aside all the three impugned deed. So the appellants filed this appeal.

Learned counsel for the Respondents/appellants draws the attention of the Court in page No. 28 of the impugned judgment wherein it was observed by the Ld. Court that on the same date two sale deeds and one gift deeds were executed. Execution of Sale deeds proves that the executions were in need of money. On the other hand, in gift t here is no consideration. Thus, there is contradiction in the intention of the executors. Physical act must be coupled with mental act. Thus, the real intention of the executors contradicts with their action. In the light of the above discussion, it could be said that fraud or undue influence was practiced upon the Phanibhusan and Bimalabala to execute the impugned deeds.

According to the learned counsel, taking the advantage of the judgment in question, Respondent Nos. 1 to 5 are trying to transfer the suit property to the Real Estate Agents.

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I have perused the impugned judgment. I have also considered the documents filed in court by way of list, which includes xerox copies of deed Nos. 1935, 1936 and 1931 in the name of the appellants and LR Records in respect of Khatian Nos. 5905, 7157 and 2845.

After considering the same, it appears that the appellants/defendants have prima facie case and they will suffer irreparable loss and injury, if the Respondents Nos. 1 to 5 succeeds in transferred any portion of the suit property and any construction is raised over that.

Accordingly, it appears that there is urgency and hence, on being satisfied, the prayer for ad-interim injunction is allowed.

Respondent Nos. 1 to 5 are hereby restrained from transferring any portion of the suit property and from making any construction over the suit property and also from changing the nature and character of the suit property till the next date.

Issue notice calling upon the respondents No. 1 to 5 to show cause within seven(7) days from the date of receipt of the same as to why the prayer for temporary injunction made by the appellant against him shall not be granted.

Appellant is directed to comply with the provision of Order 39 Rule 3(a)(b) C.P.C.

Requisites at once.

To **23.05.2025** for S.R./A.D. and TCR.

Dictated and corrected by me.

District Judge, Msd.

District Judge, Msd.