

IN THE COURT OF LEARNED CIVIL JUDGE (SENIOR DIVISION) 9TH COURT,
ALIPORE

PRESENT : SHIVAM MISHRA, CIVIL JUDGE(SENIOR DIVISION),
(IN CHARGE 8TH COURT) 24-PGS.(S) AT ALIPORE

Title Suit 354 of 2026
C.N.R No.WBSP02-000767-2026
(WB J.O Code. WB01181)

Order dated 17.03.2026

Karuna Rajgarhia & Ors. Plaintiffs

Vs.

Ashok Rajgarhia & Ors. Defendants

1. This record is placed before me by filing a put-up petition for hearing of the ad interim injunction. As per the report of the Sheristadar, no caveat is pending.

FACTUAL MATRIX

2. The instant application originates from a suit for declaration, partition, and perpetual injunction instituted by the Plaintiffs. The cornerstone of this dispute rests upon various immoveable properties, which were originally acquired and held in ownership by the late Shri Chandmull Rajgarhia and Smt. Chandramani Devi Rajgarhia, both individually and jointly. Upon the demise of Shri Chandmull Rajgarhia in the year 1978, he left behind his wife, Smt. Chandramani Devi Rajgarhia, along with eight sons and one daughter—namely, Ramratan, Maniklal, Motilal, Sajjan, Sashi, Sushil, Narendra, Sunil Rajgarhia, and Smt. Rama Patodia—to inherit his estate.

3. Following the demise of the patriarch, familial disputes emerged regarding the joint family assets and business, necessitating the intervention of Mr. Bhagawati Prasad Khaitan, a renowned Solicitor and Advocate, who was appointed as the sole Arbitrator to resolve the matters. Through a comprehensive Arbitral Award dated 24th November 1984, the disputes were adjudicated and adjudicated upon, directing the assets to be distributed equally amongst the eight branches of the family, with Smt. Rama Patodia, the sole daughter, choosing not to stake a claim. This Award reached finality, remained unchallenged, and was duly acted upon, thereby binding all parties to its terms; however, the properties remained in a state of undivided joint ownership.

4. By virtue of the aforementioned binding Award, Sri Maniklal Rajgarhia became entitled to a 1/8th undivided share in the suit properties, comprising, *inter alia*: Premises No. 21C and 23, Pratapaditya Road, Kolkata; land at Bhandaridih, Giridih; Myers Compound (Rajgarhia House), Giridih; land at Rajgarh, Rajasthan; and various lands in Shashtinagar, Mohanpur, Hassingradih, Chatro, and Motileda (Giridih), along with any other properties belonging to the estates of Chandmull and Chandramani Rajgarhia.

5. The Plaintiffs, legal heirs of the late Pradeep Kumar Rajgarhia and successors to the lineage of Maniklal Rajgarhia, assert a joint 1/8th undivided share in said properties. Tracing their title back to the definitive 1984 Arbitral Award, the Plaintiffs contend that while the family assets were divided into eight equal branches, the physical, *metes-and-bounds* partition of several of these properties in Kolkata, Giridih, and Rajasthan was never finalized, leaving them in a state of unsevered joint tenancy.

6. The history of this litigation is marked by a 2014 suit which was unfortunately dismissed for default in 2022, born of the Plaintiffs' mistaken belief that an amicable settlement had been reached. A subsequent 2023 suit similarly faced procedural hurdles during negotiations. The Plaintiffs allege that the Defendants have utilized these periods of negotiation as a deceptive stratagem to dissuade legal action, while surreptitiously attempting to alienate or alter the character of the properties. Specifically, the Defendants have threatened to oust the Plaintiffs from their residential property on Pratapaditya Road and have taken overt steps toward sale, including utilizing heavy machinery to demarcate land, erecting pillars, constructing unauthorized boundary walls, and installing new gates to facilitate internal roads for illegal development.

7. Furthermore, the Plaintiffs contend that the Defendants are in active negotiations with third-party purchasers and have completed construction activities to facilitate illegal transfers. As co-owners, the Defendants possess no right, title, or authority to unilaterally alienate or alter any specific portion of the

undivided estate. Should the Defendants not be restrained, the Plaintiffs face irreparable loss, and the litigation will be irreparably complicated by the creation of third-party rights. Consequently, this suit is filed with a prayer for an ad-interim injunction to protect the Plaintiffs' peaceful possession of the residential premises and to prevent any further encumbrance or alteration of the suit properties.

8. To bolster and substantiate their claims, the Plaintiffs have filed pertinent documentation.

QUESTION POSED FOR CONSIDERATION

9. The seminal question, submitted for my most profound deliberation, rigorous scrutiny, and ultimate determination, is whether this Court is vested with the requisite jurisdiction to grant an *ad interim* injunction, having regard to the specific facts, circumstances, and exigencies articulated by the plaintiffs/petitioners.

RATIOCINATION AND CONCLUSION

10. I have heard with undivided attention to the learned counsel representing the plaintiffs and have painstakingly perused the materials placed upon the record. Before embarking upon a deeper exploration of this matter, it is judicious to observe that the settled, foundational principles of law postulate that, in praying for an *ad interim* injunction, the plaintiffs must satisfy the indispensable "three-pillar triple test." These three paramount elements are:

- a) A *prima facie* case;
- b) Irreparable injury;
- c) The balance of convenience (or inconvenience).

The core purpose animating the grant of interim relief is the preservation of the property in *lis* until the legal rights and conflicting claims of the litigating parties are finally adjudicated. Furthermore, it seeks to evolve a workable formula, to the extent necessitated by the demands of the situation, while meticulously weighing the pros and cons of the dispute and striking a delicate, equitable balance between the conflicting interests involved.

11. It is also pertinent to mention the decision of Hon'ble Supreme Court of India in the case of **Dalpat Kumar And Anr. vs Prahlad Singh And Ors**¹ where

1. AIR 1993 SUPREME COURT 276

his Lordship observed that ,

“5. Therefore, the burden is on the plaintiffs by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that where his lordships have been pleased to observe that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the

injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit". (emphasis added)

12. Upon a diligent and keen perusal of the plaint and the accompanying injunction petition, this Court is acutely accentuated to the fact that both parties stand as co-sharers in respect of the suit property. Consequently, there is no dispute regarding the well-established legal maxim that a co-sharer possesses an interest in every inch of the undivided property; therefore, a permanent injunction cannot be granted against a true co-owner.

13. Furthermore, at this juncture, it is imperatively necessary to highlight the dictum laid down by the Hon'ble Madras High Court in the case of **Subbaiah. v Ramaswamy**² that **"Each co-sharer has the right to use the common property to his maximum advantage but subject to this that he cannot material affect the right of any other co-sharer in the common property.**

15. In the instant matter, the Plaintiffs have invoked the jurisdiction of this Court, seeking, inter alia, a restraint upon the Defendants from altering the nature, character, or form of the suit properties. Furthermore, they seek to prohibit any disturbance to the Plaintiffs' peaceful possession, alongside an injunction against the creation of any third-party interests or encumbrances thereon. It is specifically averred that the Defendants are actively attempting to construct a boundary wall and install a gate, thereby threatening the status quo.

14. While it is a well-established canon of law that a court should pause before granting an injunction if the plaintiff fails to demonstrate substantial, impending injury, the converse is equally true: where the Court is satisfied that the

² AIR 1973 Mad 42.

Defendants' actions threaten to materially alter the nature and character of undivided property, an injunction must follow. As the Plaintiffs have petitioned this Court via affidavit, the imposition of an order of *status quo* at this juncture would not constitute a miscarriage of justice against the Defendants, in line with the dictum in Subbaiah (supra). While it is acknowledged that each co-sharer is entitled to maximize their enjoyment of common property, this right is fundamentally constrained by the imperative that they cannot materially adversely affect the rights of other co-sharers in the undivided estate.

15. In light of the above, considering the urgency of the matter, this court is inclined to allow the prayer of ad interim injunction file by the plaintiffs in the form of status quo. This Court prima facie is of view that order of status quo will render justice at this stage. It is limpid that the plaintiffs have been able to pass the “three pillars triple test” by establishing his prima facie case, showing the balance of convenience and inconvenience tilted in his favour, and also showing that if the defendants are not prohibited at this stage, then the plaintiffs would suffer irreparable loss and injury beyond monetary relief. Hence, considering the urgency of the matter, this Court is inclined to allow the prayer of ad-interim injunction in the form of status quo.

16. In the wake of determination, herein above,

ORDERED,

that the both the plaintiffs and defendants and their men and agents are hereby directed to maintain the status quo of this day i.e., 17.03.2026, till 17.04.2026 and both the sides are further directed not to change the nature and character of the suit property as of this day, i.e., 17.03.2026 till 17.04.2026.

17. Issue notice upon the defendants to show cause within 15 days from

the date of receipt of the notice as to why the plaintiff's prayer for a permanent injunction shall not be made absolute. plaintiffs is hereby directed to comply with provisions U/O 39 Rule 3(a) and 3(b) at once.

D.C. by me,

Sd/-

Civil Judge (Sr. Divn.), (I/c)

8th Court, Alipore, South 24 Parganas

WBJ01181

Sd/-

Civil Judge (Sr. Divn.), (I/c)

8th Court, Alipore, South 24 Parganas

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