

**In the Court of the Additional District Judge, 1st Court, Alipore
South 24-Parganas**

Misc. Appeal No. 149 of 2025

(Arising out of Order dated 02.04.2025 passed in Title Suit No. 1629 of 2022 by the Learned 3rd Additional Civil Judge (Junior Division), Alipore)

**Present: Sri Rajesh Chakraborty (JO Code : WB00764)
Additional District Judge,
1st Court, Alipore (South 24-Parganas)**

Smt. Madhu Chhanda Datta & Anr.

... Appellants/Defendants

-versus-

Smt. Shampa Saha @ Shampa Dutta

... Respondent/Plaintiff

Date of Judgment: 10.4.2026

Judgment

This Miscellaneous Appeal has been preferred by the defendants of Title Suit No. 1629 of 2022 challenging the order dated 02.04.2025 passed by the Learned 3rd Additional Civil Judge (Junior Division), Alipore whereby the learned Trial Court rejected the defendants' application under Order XXXIX Rule 4 of the Code of Civil Procedure seeking vacating of the ad-interim injunction and allowed the plaintiff's injunction application under Order XXXIX Rules 1 and 2 CPC by directing both parties to maintain status quo in respect of the nature, character and possession of the suit property till disposal of the suit.

The Trial Court Records have been carefully perused. Learned advocates appearing for both sides were heard at length and their written notes of argument were also taken into consideration.

The suit before the Trial Court has been instituted by the plaintiff seeking declaration of right, title and interest, permanent injunction and other consequential reliefs in respect of premises No. 4D, Lansdowne Place, Kolkata. The plaintiff's case, as revealed from the pleadings and materials on record, is that Pijush Kanti Datta, the father of the parties, acquired the property and subsequently executed a registered deed of gift dated 27.11.2009 in favour of the plaintiff, who claims to be the adopted daughter of the said Pijush Kanti Datta. On the strength of the said gift deed the plaintiff asserts ownership and possession over the suit property and alleges that the defendants interfered with her possession and enjoyment, necessitating the filing of the suit along with an application for temporary injunction.

The defendants contested the injunction application and also filed an application under Order XXXIX Rule 4 CPC for vacating the interim order primarily on the ground that the donor himself had no valid title in the property, that the property stood in the name of Jyotsna Datta, and that after her death the

property devolved upon her son Avik Datta and thereafter upon the present appellants. The defendants further contended that the plaintiff was not in possession and therefore was not entitled to any order of injunction.

Upon contested hearing the learned Trial Court, after considering the pleadings, documents and rival contentions, recorded a finding that the questions relating to title, adoption, inheritance and possession were seriously disputed questions requiring evidence at the trial and that at the interlocutory stage it would not be appropriate to undertake a mini-trial on such issues. The learned Court further held that the plaintiff had succeeded in making out a prima facie case and that preservation of the subject matter of the suit required maintenance of status quo. Consequently the defendants' application under Order XXXIX Rule 4 CPC was rejected and the injunction application of the plaintiff was allowed in the form of a status quo order.

The principal contention advanced on behalf of the appellants in the present appeal is that the Trial Court failed to appreciate the question of title and possession and granted a vague order of status quo without determining who was in possession. It was further argued that since the donor of the alleged gift deed did not possess valid title, the plaintiff could not claim any prima facie case. Reliance has been placed upon several judicial decisions to contend that injunction cannot be granted against the lawful owner and that an order of status quo without determination of possession is unsustainable.

On the other hand, the learned advocate appearing for the respondent/plaintiff submitted that the order impugned is a discretionary order passed upon appreciation of materials on record and that the appellate court should be slow in interfering with such discretionary exercise unless it is shown to be arbitrary or perverse. It was further submitted that the issues relating to title and possession are matters to be decided after full trial and that at the interlocutory stage the only consideration is whether there exists a bona fide triable issue requiring preservation of the property.

Having carefully examined the impugned order, the pleadings of the parties and the materials available in the Trial Court Records, this Court finds no infirmity in the reasoning adopted by the learned Trial Court. The entire dispute between the parties revolves around complex questions relating to title, effect of the alleged gift deed, the nature of acquisition of the property, the alleged benami character of the transaction, inheritance rights and possession. These issues are clearly matters requiring evidence and adjudication during trial and cannot be conclusively determined at the interlocutory stage. The learned Trial Court has rightly observed that the Court cannot undertake a detailed examination of title while considering an application for temporary injunction.

The law governing grant of temporary injunction is well settled. At the interlocutory stage the Court is only required to examine whether a prima facie case exists, whether balance of convenience lies in favour of granting protection, and whether refusal of interim protection would result in irreparable injury. The learned Trial Court has applied these settled principles and has concluded that the subject matter of the suit should be preserved till final adjudication. The direction to maintain status quo is essentially intended to ensure that neither party alters the nature or character of the property during pendency of the suit.

The decisions relied upon by the appellants do not advance their case. The decision reported in AIR 1994 SC 532 concerns appreciation of evidence relating to possession after full trial and therefore has little application at the interlocutory stage where evidence is yet to be adduced. Similarly, the proposition that injunction cannot be granted against a lawful owner cannot be invoked at a stage where the question as to who is the lawful owner itself remains disputed and subject to trial. The decisions relating to vagueness of status quo orders also do not apply to the present case, since the

impugned order clearly directs the parties to maintain status quo with respect to nature, character and possession of the property as existing on the date of the order, which is a commonly accepted form of interim protection intended to preserve the property pending adjudication.

On the contrary, the reasoning adopted by the learned Trial Court is consistent with the principle laid down by the Hon'ble Supreme Court in Dalpat Kumar vs. Prahlad Singh and the well-accepted doctrine that at the interlocutory stage the Court should refrain from deciding disputed questions of title and should instead ensure that the property in dispute is preserved until rights of the parties are finally determined. The impugned order neither determines the title of the parties nor confers any final advantage upon either side; it merely preserves the existing state of affairs to prevent multiplicity of proceedings and potential complications during trial.

It is also a settled principle that an appellate court should not interfere with the exercise of judicial discretion by the Trial Court in matters relating to grant or refusal of interim injunction unless the discretion has been exercised arbitrarily, capriciously or contrary to settled principles of law. In the present case the discretion exercised by the learned Trial Court is based on proper appreciation of the pleadings and legal principles and does not suffer from perversity or illegality warranting interference.

Upon a comprehensive consideration of the pleadings, the Trial Court Records, the submissions advanced by the learned advocates of both sides and the legal position governing interlocutory injunctions, this Court is satisfied that the impugned order does not call for interference. The appeal is therefore devoid of merit.

Accordingly, the Misc. Appeal No. 149 of 2025 stands dismissed on contest.

Hence, it is

ORDERED

The order dated 02.04.2025 passed by the Learned 3rd Additional Civil Judge (Junior Division), Alipore in Title Suit No. 1629 of 2022 is hereby affirmed. The learned Trial Court is requested to expedite the disposal of the suit in accordance with law without being influenced by any observation made in this judgment, which is confined only to the adjudication of the present appeal.

Let the Lower Court Records be transmitted back forthwith along with a copy of this judgment.

D/C by me

Additional District Judge,
1st Court, Alipore

Additional District Judge,
1st Court, Alipore