

IN THE COURT OF DISTRICT JUDGE,
SOUTH 24-PARGANAS AT ALIPORE

Misc. Appeal No. 192 of 2025 (R-192)

Present : Sri Chinmay Chattopadhyay-II (WB00695) District Judge-in-charge,

Dilip Kumar Senapati

... Appellant

Vs.

Swapan Kumar Senapati & Ors.

... Respondents

Order No. 02, dated 25.06.2025

The record is taken up at the instance of a put up petition filed on behalf of the appellant.

Appeal is admitted.

Ld. Advocate for the appellant prays for moving the application filed under Order 39 Rules 1 and 2 read with Section 151 of C.P.C.

As per office report, no caveat has been filed.

As such, the application filed under Order 39 Rules 1 and 2 read with Section 151 of C.P.C. is taken up for hearing.

The case of the appellant, in a nutshell, is that the appellant/plaintiff and respondent/defendant nos. 1 to 4 are the joint owners of the Item No. I of the Schedule 'A' property by purchase from the then owner, namely, Biswanath Maity by executing three separate registered Deeds of Conveyance dated 20.08.1980. The appellant and his brother, i.e. the respondent nos. 1 to 4 herein, during their joint possession and enjoyment of

the land being owners decided to develop and schedule properties by making construction of a multi-storied building for commercial purposes and, accordingly, they appointed A & D Construction Proprietorship firm. Accordingly, on 26.09.2012, a registered Development Agreement was executed between the appellant, respondent nos. 1 to 4 and respondent no. 7. Thereafter, the respondent no. 7 obtained Sanction Plan from Chandi Gram Panchayat. As per the Development Agreement, the appellant and his brothers, being respondent nos. 1 to 4, are entitled to get 50% share of the entire building and exclusively the roof of the building, specifically mentioned in the registered Development Agreement.

The appellant has alleged that the respondent no. 7, being the Developer, in collusion with the respondent nos. 1 to 4, without handing over the possession of the owner's allocation are trying to sell the developer's allocation and some portion of the owner's allocation from Item No. I of the schedule 'A' property in favour of Suvadip Palui, the respondent no. 8 herein, by virtue of a registered Deed of Conveyance dated 6th December, 2024. The appellant has further alleged that the respondent no. 8, in collusion with respondent nos. 1 to 4 and 7 are trying to take forceful possession of the portion of Item No. I of the schedule 'A' property. Upon knowing the same, the appellant lodged a complaint before the local P.S. vide G.D.E No. 243 dated 03.06.2025. The appellant has further stated that the respondent no. 9 is forcing the appellant to sell the Schedule 'C' property.

Finding no other alternative, the appellant, as plaintiff, filed a suit, being Title Suit No. 842 of 2025, for declaration, partition, mandatory and permanent injunction before the Ld. Trial Court along with an application under order 39 Rules 1 and 2 read with Section 151 of C.P.C. with a prayer

for an order of ad-interim injunction which the Ld. Trial Court refused. As such, the appellants have filed the instant Misc. Appeal along with an application under order 39 Rules 1 and 2 read with Section 151 of C.P.C. praying for an order of ad-interim injunction.

Heard the submission of the Ld. Advocate for the appellant.

Perused the materials annexed with the record.

Upon perusal of the application for temporary injunction, supported by an affidavit, it appears that the respondents are trying to change the nature and character of the schedule-mentioned properties by way of construction. It is also seen that the respondents are trying to transfer the schedule-mentioned properties to third parties. There is urgency in preserving the suit property from alienation.

Considering the materials available on record and the averments made in the application for temporary injunction, which has been supported by an affidavit, it appears that the appellants have been able to make out a prima facie case in his favour and the balance of convenience and inconvenience is also in favour of the appellant. If, at this stage, an order of ad-interim injunction is not granted in favour of the appellant, then the appellant will suffer irreparable loss and injury. As such, this Court is of the opinion that an ad-interim injunction may be granted for a restricted period in favour of the appellant till hearing the respondents.

Hence,

it is,

ORDERED

that the prayer for an order of ad-interim injunction is allowed in favour of the appellants till **21.07.2025**.

The respondents and their men and agents are restrained from selling, transferring, alienating, encumbering and/or creating any third party interests in respect of the suit properties as mentioned in the schedules of the injunction application till **21.07.2025**.

The appellant/plaintiff is directed to comply with the provisions as enumerated under Order 39 Rule 3 (a) and 3 (b) of C.P.C.

Issue notices upon the respondents asking them to show cause within 15 (fifteen) days from receipt thereof as to why the instant Misc. Appeal shall not be allowed in favour of the appellant.

Requisites at once.

To date i.e. **21.07.2025** for S/R and A/D.

Dictated & corrected by

Sd/- Sri Chinmay Chattopadhyay-II

District Judge I/c

Sd/- Sri Chinmay Chattopadhyay-II

District Judge I/c