

High Court Form No. (J) 2

Heading Of Judgment In An Original Suit/Case

District :24 Parganas (South)

In the Court Of :Additional District Judge, Fast Track,
II Court, Sealdah,Present :Parna Bhattacharjee
J.O. Code :WB01015.Wednesday, 21st day of March, 2026.**Misc. Appeal No.20/2024.****C. I. S. No.69 of 2024.****CNR No.WBSP07 003674 2024**

Biman Sen and 59 Others.....Appellants.

-Versus-

Kartick Paul and 04 Others.....Respondents.

This appeal coming on for final hearing on 19.02.26, 07.03.26 in
the presence of

Sri Rakheswar Dey Sarkar.....Advocate for the Appellants.

Smt. Mitra Guha (Pal), Anchita Singh and Sri Suman Kumar
Mishra,

.....Advocates for the Respondents.

-and having stood for consideration to this day, the Court delivered the
following judgment.**Grounds for Appeal:**Being aggrieved and dissatisfied with the order dated 19.09.2024
passed in Title Suit 145/2008 passed by Ld. Civil Judge (Junior
Division), 1st Court, Sealdah this instant appeal has been filed on the
following grounds:-1. That the Order dated 19.09.2024 as passed by Ld. Trial Court
is misconceived both in law and facts.2. That the Ld. Trial Court failed to consider the supporting
documents.

Brief Facts:-

The lis of the dispute in nutshell is that the appellants/plaintiffs are the owners of the suit schedule B property is morefully described in the schedule of the Plaint, being recorded settlors of the Khasmahal land. Their names have been duly mutated in the Master of Records of Khasmahal land by the concerned government authority. It is the specific claim of the plaintiffs/appellants that they are the owners of the said suit schedule property. It is the categoric allegation of the plaintiffs/appellants that in the month of March, 2008, they came to know that the suit schedule B property has been mutated in the name of one Ashalata Roy and after her demise to her son Kartick Paul and daughter Jhunu Roy, who claim the title of the suit property. The plaintiffs/appellants have further alleged that by practicing misrepresentation, the mother of the respondent nos.1 and 2 had mutated her name in the record of rights of KMC and now the respondents are trying to make construction and create Third party interest in the suit property. Hence, the application for temporary injunction has been filed.

The defendants by filing their Written Objection have denied all the contentions of the Plaintiffs/appellants.

Points for Determination:-

Whether the order dated 19.09.2024 as passed by Ld. Civil Judge (Junior Division), 1st Court, Sealdah is erroneous?

Argument:-

Heard Ld. Advocate on behalf of both sides at length.

Ld. Advocate on behalf of the respondent no.1 has place his reliance upon the following decisions as reported in:-

1. **Civil Appeal No.878 of 2009** and
2. **1966 AIR 405.**

Ld. Advocate on behalf of respondent no.2 has relied upon the following decisions as reported in:-

1. **1983 (1) CHN 349;**

2. **2020 (2) ICC 568 (Cal)** and

3. **2020 (1) ICC 549(Telan).**

Decision with Reasons:-

It is noteworthy to mention at the outset that in **Prem Chand Vs. Manak Chand AIR 1997 Raj 198**, it was held by Hon'ble Court that injunction being in the nature of preventive relief is generally granted taking note of the equity.

In **P. Govindaswamy Vs. S. Narayanan (1987) Supp. SCC 58**, it was held by Hon'ble Apex Court that at the time of hearing of the petition for temporary injunction the Court can express only its tentative view.....It will not be implied as being a finding on the merits of the matter.....

In the words of White CJ : The granting of a temporary injunction under the powers conferred is a matter of discretion.

In **Dalpat Kumar Vs. Prahlad Singh AIR 1993 SC 276**, it was observed by Hon'ble Apex Court that the phrases 'prima facie case' 'balance of convenience' and 'irreparable loss' are words of width and elasticity to meet myriad situations presented by man's ingenuity in given facts and circumstances.....

In **Gadadhar Mishra Vs. Biraja Devi AIR 1999 Ori 226**, it was observed by Hon'ble Court that for establishing a prima facie case it is not necessary for the party to prove his case to the hilt and if a fair question is raised for determination, it should be taken that a prima facie case is established.

The principles of balance of convenience implies the evenly balancing of scales.

In **Sanjeev Kumar and Co. Vs. Bishnu Prasad, AIR 1999 Ori 90**, it was held by Hon'ble Court that the term 'irreparable injury' means injury which is substantial and could never be adequately remedied or atoned for by damages, injury which cannot possibly be repaired. It implies a substantial and continuous injury for which there does not exist and standard for ascertaining the actual damage likely to

be caused.....injury must be material one, that cannot be adequately remedied or compensated by way of damages.

At the stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail. What the Court has to examine is:-

- i) the plaintiff has a prima facie case to go for trial;
- ii) the protection is necessary from the species of injury known as irreparable before his legal rights can be established and
- iii) that the mischief of inconvenience likely to arise from withholding injunction will be greater than what is likely to arise from granting it.

The Court may grant the relief even at a belated stage.

Coming to the case in hand and from the perusal of the documents as filed by the plaintiffs/appellants including the order of the Collector U/Sec.48 of Land Registration Act, 1876 as well as documents showing renumbering of original premises No.1/1/1, Chingrihata Lane I do not find any mention of suit schedule B property separately. Moreover, admittedly the defendants/ respondent nos.1 and 2 are in possession of the said suit schedule B property and in support of the said contention they have filed Voter Card, Savings Bank Passbook and Aadhar Card etc.

As from the documents relied upon by the appellants/ plaintiffs it appears that their names are jointly included in respect of renumbered premises situated at Ramkrishna Naskar Lane, any Third Party interest in respect of suit schedule B property by way of alienation will only invite multiplicity of suits and proceedings, as I find protection and preservation of the suit schedule B property is the need of the hour.

Before parting I would hasten to add that this Court is not oblivious of the fact that it is well settled legal proposition that the power of appellate court under Order 43 is very limited, as the Court will only consider the propriety or corrections of the order appealed against. It is also well settled position of law that orders of status-quo

ought not be passed without clarifying which party is in possession of the property and in view of above discussion possession of the property has been dealt with. So, the ratio of the decision as reported in **2020 (2) ICC 568 (Cal)** is distinguishable and at variance with the instant suit.

Under such facts and circumstances parties are to maintain the same nature, character and possession of the suit schedule B property, as it stands today.

In view of above observation, the instant Misc. Appeal is disposed of on contest and the order as passed by Ld. Trial Court vide Order dated 19.09.2024 stands modified to the effect as discussed in the body of the Judgment.

Hence, it is,

O r d e r e d

That the instant Misc. Appeal be and the same is allowed on contest.

The Order dated 19.09.2024 as passed by Ld. Civil Judge (Junior Division), 1st Court, Sealdah is hereby set aside.

Both parties are directed to maintain the present nature, character and possession of the suit Schedule property as described in the Schedule of the Plaint morefully, as its stands today till the disposal of Title Suit No.145/2008.

There is no order as to costs.

Let a copy of Judgment along with TCR be sent to the Court of Ld. Civil Judge (Junior Division), 1st Court, Sealdah at once.

Dictated and Corrected by me

Additional District Judge,
Fast Track, 2nd Court,
Sealdah.

Additional District Judge
Fast Track, 2nd Court,
Sealdah.