

Misc. Appeal No. 15 of 2024
Naimuddin & others VS. Dhanbar Ali & others

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West Bengal Form No.3702
HIGH COURT FORM No. (J) 3.
HEADING OF JUDGMENT OF APPEAL

DISTRICT: - UTTAR DINAJPUR

*In the Court of the Additional District Judge,
2nd Court, Islampur, Uttar Dinajpur.*

Present : **Sri Binay Kumar Nonia (J.O.Code : WB01032)**
**Additional District Judge, 2nd Court,
Islampur, Uttar Dinajpur.**

Dated: 30th day of April, 2026

Misc. Appeal No.15 of 2024
CNR No. WBUD05-001071-2024

Naimuddin & others
.....Appellant(s)/Petitioner

Versus

Dhanbar Ali & others
.....Respondent(s)/OPs

This appeal coming on this day on 20.04.2026 and or having heard in the presence of :-

Sudarshan Saha

Advocate(s) for Appellant(s)/Petitioner

Sanauwar Alam

Advocate(s) for Respondent(s)/OPs

and having stood for consideration to this day, the Court delivered the following :

J U D G M E N T

Order under challenge

1. The present Misc. appeal is preferred **under Order-43 Rule- 1(r) of Code of Civil Procedure** against the order No.4 dated 05.07.2024 passed by the Ld. Civil Judge (Jr. Division.) at Islampur, in connection with Title Suit No. 182 of 2023 rejected the

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injunction application under Order 39 Rule 1, 2 and 3 of CPC dated 05.07.2024 filed by the plaintiff. It was filed before Ld Addl. District Judge, 1st Court, Islampur and then transferred to this court for disposal.

2. Grounds of Appeal:-

- i. Ld. Trial Court below did not consider the prima facie case.
- ii. Ld. Trial Court should have contained that there is a prima facie case in favour of the plaintiffs and if injunction would not be given then the plaintiffs shall sustain irreparable loss and injury.
- iii. That the perception taken by Ld. Trial Court below in respect of urgency of the matter seems not proper.
- iv. That the observations as taken by Ld. Trial Court below seem not proper.
- v. That all other grounds, which are left untouched in this memo of this appeal shall be presented at the time of hearing of this appeal and the appellants crave leave to that effect.

Submission of the Ld. Counsels for the appellant/plaintiff and respondents/defendants :

3. Ld Advocate for the appellants/plaintiffs submits that the plaintiffs have filed the instant suit for declaration of title, permanent injunction and partition in respect of the suit property against the defendants. An interim order of status quo should be passed in respect of the suit property till the disposal of the appeal as well as the disposal of the suit. The plaintiffs have all the documents regarding the inheritance of the property and submitted the same before the Trial Court. The Trial Court has refused the ad interim application on the flimsy ground and pray for injunction order. He filed list of documents including RS Khatian and copy of judgment of case No.38 u/s 44 (1) of WBEA Act.

4. Ld. Advocate for the defendants submit that the appellants have not filed current record of rights in respect of the suit property. There is huge number of plots in the schedule property of the plaintiff. The defendants/respondents have not submitted written statement before the Trial Court. At this stage, the injunction order will have adverse effect on the parties of the suit and pray for rejection of the Misc Appeal.

5. Decision of the Trial Court

The Ld. Trial Court ordered that *that the petition of the plaintiffs under order 39 rule 1, 2 and 3 of CPC for ad-interim injunction against the defendants is hereby refused at this stage.*”

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6. Point for determination

Whether the Ld Trial court has justified in rejecting the injunction application vide order No.4 dated 05.07.2024 ?

Decision and Findings of the Court

7. The bone of dispute as apparent from the crux of submission of the parties in the present Misc. Appeal, it appears that appellant/plaintiff has instituted the title suit before the Trial for declaration and permanent injunction and claimed that they are the owner of the suit properties by virtue of Muslim Law from their inheritance from their ancestor namely, Hussain Ali and Sher Ali. The record of rights during RS survey and Khatian No.49 was prepared accordingly, in their names. Bhoki the daughter of Hussain Ali died before death of Hussain Ali. Sher Ali was only the legal heir of Hussain Ali. After demise of Sher Ali the entire share revolved upon the legal heirs of the said share. But the name of Bhoki erroneously recorded as a heir of the Sher Ali which has been deleted in the year 1969 by the competent authority. The Ld. Trial Court has refused the injunction application on the sole ground and opportunity of being heard may be given to the defendants so the matter may be well-adjudged in presence of the both parties otherwise there will be miscarriage of justice.

8. It is relevant to mention the observation of the Ld Trial Court that the “ there is dispute regarding the *correction of Record of Rights and in respect of which a case is pending before the appropriate forum and at this stage urgency as has been shown in the application for injunction is not so convincing and this Court is in opinion that an opportunity of being heard may be given to the defendants so that the matter may be well adjudged in presence of both the parties, otherwise there will be a miscarriage of justice. The facts and circumstances of the case make this Court belief that the object of granting order of ex parte ad interim injunction would not be defeated by delay*”.

9. This Court is of further view that there are huge number of plots and huge number of parties in this suit. It is well-settled that the parties who seeks injunction should be established prima facie case, balance of convenience and inconvenience and irreparable loss or injury in his or their favour. The instant case at hand, the Trial Court has not shut the door of injunction and refused the injunction application on the ground of lack of urgency at that period of time. Now, the defendants/respondents have already entered into the appeal and willing to contest the suit. This Court did not find any error in the order No.4 dated 05.07.2024 of the Trial Court. The appellants/plaintiffs may at liberty to seek the appropriate order of injunction during the hearing of the suit in presence of both the parties. Accordingly, order no. 04 dated 05.07.2024 passed by the Ld. Civil Judge (Jr. Division.) at Islampur, in connection with Title Suit No. 182 of 2023 rejected the injunction petition is found to be proper and just.

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10. Thus, Appeal failed.
11. Memorandum of Appeal is a sufficiently stamped.
12. Hence, it is

ORDERED

that the instant Miscellaneous Appeal be and the same is dismissed on contest but without any order as to cost.

The impugned order No.4 dated 05.07.2024 passed by the Ld. Civil Judge (Jr. Division.) at Islampur, in connection with Title Suit No. 182 of 2023 is hereby affirmed.

Let the T.C.R along with a copy of this judgment be sent down to the Ld. Trial Court at once.

Note in the CIS and in the relevant registers.

Dictated & Corrected.

Addl. District Judge,

Addl. District Judge,
2nd Court, Islampur, Uttar Dinajpur.