

West Bengal Form No. 3702.

**HIGH COURT FORM NO. (J) 3
HEADING OF JUDGMENT ON APPEAL**

DISTRICT : PASCHIM MEDINIPUR.

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
1st COURT, PASCHIM MEDINIPUR.**

**MISC. APPEAL NO. 157/2024
CIS REG. No. 158/2024
CNR No. WBWM010076522024**

**Present : *Sri Pushpal Satpathi,*
Additional District Judge,
1st Court, Paschim Medinipur
*(J.O Code. WB 01301).***

Date of Delivery of Judgment :- 30th day of June, 2026.

From the Order No. 11 dated 02-08-2024 of the Ld. Civil Judge (Jr. Div.), 1st Court, Sadar, Paschim Medinipur and made in Title Suit No. 406/2023.

1. Moulana Sk. Saifuddin

.....Appellant/Plaintiff.

-Versus-

**1. Minor Mahira Sultana
2. Sk. Mahirul Islam**

..... Principal Respondent(s)/Defendant(s)

3. Block Land & Land Reforms Officer, Midnapore Sadar

..... Proforma Respondent/Defendant

This appeal coming out this day (or having been heard on 01-06-2026)* in the presence of

Shri Subal Chakraborty The Learned Advocate for Appellant(s)

Shri Kushal MishraThe Learned Advocate for Respondent(s).

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

This Miscellaneous Appeal is directed against Order No. 11 dated

02.08.2024 passed by the Learned Civil Judge (Junior Division), 1st Court, *Paschim Medinipur* in T.S. No. 406 of 2023, whereby the Learned Trial Court rejected the petition for temporary injunction filed by the appellant/plaintiff under Order XXXIX Rules 1 and 2 read with section 151 of the Code of Civil Procedure and allowed the petition for temporary injunction filed by respondents/defendant Nos.1 and 2 under Order XXXIX Rules 1 and 2 read with section 151 of the Code of Civil Procedure, restraining thereby the appellant/plaintiff from interfering with the peaceful possession of the respondents/defendant Nos. 1 and 2 over the suit property till disposal of the suit.

The bird's eye view of the factual matrix can be summarized as follows:-

According to the appellant/plaintiff, he purchased 34 decimals of land comprised in Plot No.935 under *Khatian* No.866 of *Mouza Banpura*, as described in Schedule 'A' of the plaint, from the original owner Sk. Mosibul Hossain by a registered *Kobala* dated 28.07.1989 being Deed No.6110 and since such purchase, he has been in exclusive possession of the suit property. It is alleged that respondents/defendant Nos.1 and 2 subsequently threatened the peaceful possession of the plaintiff and claimed ownership over the selfsame property by virtue of a registered sale deed dated 12.10.2022 being Deed No.7597 executed by the said Mosibul Hossain in favour of respondent/defendant No.2. It is further alleged that respondent/defendant No.2 transferred the suit property in favour of respondent/defendant No.1 by a registered deed of gift dated 24.01.2023 and the present L.R.R.O.R. has been prepared in the name of defendant No.1. The plaintiff instituted the suit praying for declaration that the deeds executed in the years 2022 and 2023 are void, illegal and not binding upon him and also sought permanent injunction. Respondents/Defendant Nos.1 and 2 entered appearance and filed written objection and counter claim challenging the deeds relied upon by the plaintiff and also prayed for temporary injunction. Upon hearing both sides, the Learned Trial Court rejected the application for temporary injunction filed by the plaintiff and allowed the application filed by defendant Nos.1 and 2.

Being aggrieved by and dissatisfied with the said impugned order, the appellant/plaintiff has preferred the instant appeal on the following amongst other grounds :-

- a) For that the Court below has erred both in law and on facts.
- b) For that the Court below proceeded on conjectures and surmises and failed to arrive at a correct finding.
- c) For that the Court below misconceived and misconstrued the entire case and arrived at an erroneous decision.
- d) For that the Court below failed to properly appreciate the facts and circumstances of the case and thereby failed to dispense proper justice.
- e) For that the Court below erred in holding that respondents/defendant Nos. 1 and

2 had a *prima-facie* case in their favour.

- f) For that the Court below erred in holding that respondents/defendant Nos. 1 and 2 had the balance of convenience and inconvenience in their favour.
- g) For that the Court below erred in granting an order of temporary injunction in favour of respondents/defendant Nos. 1 and 2, as a result whereof the appellant/plaintiff shall suffer irreparable loss and injury.
- h) For that respondents/defendant Nos. 1 and 2 suppressed material facts before the Learned Court below in order to procure the order of injunction.
- i) For that respondents/defendant Nos. 1 and 2 misled and misguided the Learned Court below in order to procure the order of injunction.
- j) For that the Court below ought to have held that the principal respondents had no *prima-facie* case and failed to establish any *prima-facie* case.
- k) For that the Court below ought to have held that the principal respondents had no case of irreparable loss and injury.
- l) For that the Court below ought to have held that the balance of convenience and inconvenience was in favour of the appellant and against the principal respondents.
- m) For that the Learned Court below ought to have held that Sk. Mosibul Hossain had no right, title, interest or possession in respect of the 'A' Schedule suit property in favour of respondent No. 2, inasmuch as Sk. Mosibul Hossain had earlier, by Sale Deed No. 6110 of 1989 dated 28.07.1989, transferred the suit property in favour of the appellant/plaintiff, and thereafter had no subsisting right, title, interest or possession over the suit property.
- n) For that the Court below ought to have held that the principal respondents were not entitled to obtain an order of injunction.
- o) For that the Court below ought to have rejected the Counter-Claim as well as the application for temporary injunction filed by the principal respondents.

SUBMISSION MADE AT THE BAR

Learned Advocate appearing for the appellant submits that the appellant/plaintiff purchased the suit property from the admitted previous owner Sk. Mosibul Hossain by a registered deed dated 28.07.1989 and possession thereof was delivered to him. It is argued that once Mosibul Hossain transferred the suit property in favour of the plaintiff, he had no surviving right, title and interest to execute another deed in favour of defendant No.2 in the year 2022. It is further submitted that the sale deed dated 12.10.2022 and the subsequent deed of gift dated 24.01.2023 are void and inoperative and consequently defendant Nos.1 and 2 could not have obtained any lawful title

thereunder. Learned Advocate contends that the entry in L.R.R.O.R. neither creates nor extinguishes title and is maintained only for fiscal purposes. Reliance has been placed upon *Dalpat Kumar Vs. Prahlad Singh and others*, AIR 1993 SC 276, *Jitendra Singh Vs. State of Madhya Pradesh and others in Special Leave Petition* © No. 13146/2021, *P. Kishore Kumar Vs. Vittal K. Patkar in Civil Appeal No. 7210 of 2011* and *Jitendra Nath Chalki and Others Vs. Bimal Krishna Kundu Chowdhury and another passed in F.A No. 41 of 1985, reported in 2006 (2) CHN 687*.

Per contra, Learned Advocate appearing for respondents/defendant Nos.1 and 2 submits that the conduct of the appellant/plaintiff disentitles him from obtaining equitable relief. It is contended that although the appellant/plaintiff claims to have purchased the suit property in the year 1989, he never took steps for mutation of his name in the Record-of-Rights for more than three decades and failed to produce rent receipts, mutation records or any contemporaneous documents to indicate assertion of possession. It is further submitted that defendant Nos.1 and 2 obtained mutation in accordance with law and the recent Record-of-Rights stand in their favour. It is also submitted that the plaintiff suppressed the rejection of his mutation application and failed to implead Mosibul Hossain, his alleged vendor, as a party to the suit. Learned Advocate relies upon *Bruce Vs. Silva Raj and Others, reported in 1987 Supp SCC 161*, *Soumen Sengupta and Others Vs. Asia Heart Foundation and Others, passed in FMA No.4802 of 2016 (Paragraph 17)*, *Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and Another, reported in 1993 (3) SCC 161*, and *(2008) 11 SCC 1*, and submits that while considering an application for temporary injunction, the Court is required to examine *prima-facie* possession, balance of convenience and irreparable injury and that the Appellate Court should be slow in interfering with a discretionary order passed by the Trial Court.

POINT FOR DETERMINATION

The only point that arises for determination in this appeal is whether the Learned Trial Court was justified in rejecting the prayer for temporary injunction filed by the appellant/plaintiff and in allowing the prayer for temporary injunction filed by respondents/defendant Nos.1 and 2.

DECISION WITH REASONS

It is a settled principle of law that grant of temporary injunction is governed by the three cardinal principles, namely, *prima-facie* case, balance of convenience and irreparable injury, as laid down by the Hon'ble Supreme Court in *Dalpat Kumar Vs. Prahlad Singh, reported in (1992) 1 SCC 719* (supra), wherein it has been held that these ingredients must co-exist before granting an injunction.

Further, in *Wander Ltd. and Another Vs. Antox India (P) Ltd., reported in 1990 Supp SCC 727*, the Hon'ble Supreme Court has held that the Appellate Court should not

interfere with the discretionary order of the Trial Court unless such discretion has been exercised arbitrarily, capriciously or perversely.

In *Morgan Stanley Mutual Fund Vs. Kartick Das, reported in (1994) 4 SCC 225*, the Hon'ble Apex Court held that an interim injunction is an equitable and discretionary relief and the Court must exercise caution while granting such relief.

In *Premji Ratansey Shah and Others Vs. Union of India and Others, reported in (1994) 5 SCC 547*, it has been held that injunction being an equitable relief cannot be granted when the conduct of the party does not justify such relief.

Learned Advocate for the appellant has relied upon *Jitendra Singh Vs. State of Madhya Pradesh & Ors, P. Kishore Kumar Vs. Vittal K. Patkar and Jitendra Nath Chalki and Others Vs. Bimal Krishna Kundu Chowdhury and Anr, reported in 2006 (2) CHN 687*, to contend that entries in the Record-of-Rights do not create or extinguish title. There is no dispute with the aforesaid proposition of law. Revenue entries are maintained primarily for fiscal purposes and do not by themselves confer title.

In *Bruce Vs. Silva Raj and Others, reported in 1987 Supp SCC 161* (supra), the Hon'ble Supreme Court reiterated that grant of temporary injunction is a discretionary and equitable relief and the Court should ordinarily preserve the existing state of affairs where the materials indicate *prima-facie* possession in favour of one of the parties.

Likewise, in *Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and Another, reported in 1993 (3) SCC 161*, the Hon'ble Supreme Court observed that while granting or refusing injunction, the Court must exercise its discretion cautiously and judicially.

In *Soumen Sengupta and Others Vs. Asia Heart Foundation and Others (FMA No.4802 of 2016)*, the Hon'ble Division Bench of the Calcutta High Court observed that although mutation does not confer title, the Court at the interlocutory stage can take note of revenue records and surrounding circumstances for arriving at a *prima-facie* conclusion regarding possession and that an Appellate Court ought not to interfere with the discretionary order of the Trial Court unless the same is shown to be arbitrary or contrary to settled principles of law.

However, the impugned order reveals that the Learned Trial Court has not treated the entries in the L.R.R.O.R. as conclusive proof of ownership. Rather, the Learned Trial Court considered the recent entries in favour of respondents/defendant Nos.1 and 2 as one of the circumstances indicating *prima-facie* possession. It appears from the records that both sides claim title through a common predecessor, namely, Sk. Mosibul Hossain. The appellant/plaintiff claims under a deed executed in the year 1989 whereas defendant Nos.1 and 2 claim through deeds executed in the years 2022 and 2023. The Learned Trial Court noticed that defendant Nos.1 and 2 produced recent Record-of-Rights standing in their names. On the other hand, the plaintiff, despite claiming purchase in

the year 1989, failed to produce mutation records, *khajna* receipts, rent receipts or any other contemporaneous documents to indicate continuous assertion of possession over the suit property. The validity of the rival deeds and the question as to whether the subsequent deeds executed in favour of defendant Nos.1 and 2 are void or otherwise are matters requiring evidence and can only be finally adjudicated upon during trial.

Having considered the materials-on-record, this Court finds that the Learned Trial Court exercised its discretion upon due consideration of the pleadings, documents and rival contentions of the parties. The Learned Trial Court found that defendant Nos.1 and 2 were able to establish *prima-facie* possession over the suit property and consequently held that the balance of convenience and inconvenience also lay in their favour.

This Court does not find that the discretion exercised by the Learned Trial Court suffers from arbitrariness, perversity or illegality warranting interference in appeal.

Upon consideration of the entire materials-on-record and the settled principles of law, this Court is of the opinion that the impugned order does not call for any interference.

Accordingly, the point for determination is answered in the affirmative.

Hence, it is,

ORDERED

That the Miscellaneous Appeal No. 157 of 2024 be and the same is dismissed on contest, however, without any order as to costs.

The impugned Order No.11 dated 02.08.2024 passed by the Learned Civil Judge (Junior Division), 1st Court, *Paschim Medinipur* in T.S. No.406 of 2023 is hereby affirmed.

The Learned Trial Court is requested to make all endeavour to dispose of the suit as expeditiously as possible, preferably within a short span, without granting unnecessary adjournments to either of the parties.

Let a copy of this judgment be transmitted to the Learned Trial Court forthwith for information and necessary action.

Dictated & Corrected by me

Addl. Dist. Judge,
1st Court, Paschim Medinipur

(Shri Pushpal Satpathi)
Addl. Dist. Judge,
1st Court, Paschim Medinipur