

Sl. 35.
26.06.2025
Court No.6
BP

C.O. 2221 of 2025

Sannyasi Maity
-versus-
Pritilata Duary @ Pritilata Duari

Mr. Rajdeep Bhattacharya
... for the petitioner

By the order impugned the miscellaneous appeal was allowed thereby setting aside the order passed by the learned trial judge. The petitioner filed a suit for declaration of the right of user over “kha” schedule passage which forms part of “ka” schedule property and for mandatory injunction in respect of “ga” schedule property and for other consequential reliefs. The petitioner filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for an order of injunction restraining the opposite party from changing the nature and character of the “kha” schedule passage.

The learned trial judge by the order dated 4th February, 2023 passed an order of status qua in respect of nature, character and possession of the suit property without indicating in respect of which property such order of status quo was passed.

The learned judge of the appellate court reversed the finding of the learned trial judge on the ground that the main dispute was with regard to “ga” schedule property which is a part of “kha” schedule property.

After going through the plaint this Court finds that the petitioner has sought for mandatory injunction in respect of “ga” schedule property and has also prayed for permanent injunction restraining the opposite party from changing the nature and character of the “kha” schedule passage.

The learned judge of the first appellate court failed to consider such aspect of the matter.

The petitioner is directed to serve a copy of this application under Article 227 of the Constitution of India upon the opposite party by registered speed post with acknowledgement due and file an affidavit of service on the next date.

The common passage has been described in “kha” schedule of the plaint. If during the pendency of the civil revisional application the nature and character of the “kha” schedule common passage is changed, the petitioner will suffer irreparable loss and injury.

After going through the materials on record, this Court is of the view that the petitioner has made out a strong prima facie case for grant of an order of injunction in respect of “kha” schedule property.

There shall be an order of injunction restraining the opposite party from changing the nature and character of the “kha” schedule property till the end of the month of September, 2025 or until further orders whichever is earlier.

List this matter under the heading “Contested Application” in the Monthly List of September, 2025.

(Hiranmay Bhattacharyya, J.)