

22.1.2025
Court No. 3
Item no.30
samarpita

**CALCUTTA HIGH COURT
CIRCUIT BENCH AT JALPAIGURI**

C.O. 8 of 2025

Samsul Nechha Begam @ Shamsul Nessa Begam & Ors.

Vs.

Bhaggobati Sarkar & Ors.

Mr. Tapash Bhattacharya,

Mr. Bikash Singha

... for the petitioner

This Civil Revision has been filed challenging order no. 5, dated 11th December, 2024 in Misc. Appeal No. 63 of 2024 passed by the Learned District Judge, Jalpaiguri, refusing to pass ad interim order of injunction in Partition Suit No. 252 of 2024, pending before the Learned Civil Judge, Senior Division, Jalpaiguri.

Mr. Tapash Bhattacharya, learned advocate appearing on behalf of the petitioner submits that the plaintiffs and the defendants are the co-sharers in respect of the suit property. The plaintiff filed a suit for partition in respect of the joint property. In the said suit, the plaintiffs also filed an application under *Order XXXIX, Rules 1 and 2* read with Section 151 of the Code of Civil Procedure for grant of the temporary injunction along with a prayer for *ad interim* order for injunction. The learned Civil Judge, Senior Division, Jalpaiguri, refused to grant *ad*

interim injunction which was assailed in appeal being Misc. Appeal 63 of 2024 before the Learned District Judge. In the appeal, *ad interim* injunction was also refused, considering the averments made in paragraph of the injunction petition, however, it failed to take into account the subsequent pleadings which states of the illegal activities of the defendants. Both the learned Trial Court as well as the Appellate Court failed to appreciate the case of the plaintiffs. He prays for an order of *status quo* over the suit property.

The suit has been filed for partition of the schedule property. It is the specific case of the plaintiffs that the defendants are trying to encroach upon the share of the plaintiffs in the suit property and trying to alienate the suit land. Bearing in mind the nature of the suit, it would be apposite to direct for an order of *status quo* to be maintained by all the parties to the suit for preservation and protection of the suit property. This Court finds that an arguable case has been made out.

Accordingly, the Civil Revision is admitted.

Issue notice upon the opposite parties-defendants.

Accordingly, the plaintiffs and the defendants are directed to maintain *status quo* as regards possession, nature and character of suit property for

a period of six weeks or until further orders, whichever is earlier.

Parties shall be at liberty to pray for modification, variation and/or vacating of the order upon notice to the other side.

Petitioner is directed to serve notice upon the opposite parties-defendants through registered speed post with acknowledgement due and to file the affidavit-of-service on the returnable date.

List this matter before the next available Circuit Bench.

(Bivas Pattanayak, J.)