

19.05.2026

Ct. no.7.

Sl. No.6

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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction
Appellate Side

C.O. NO.66 OF 2026

SANJAY KUMAR SAHA ALIAS SANJAY KUMAR
SHAHA @ SANJAY KR SHAHA & ORS.

Vs.

PHUP TSHERING SHERPA & ORS.

Mr. Reshab Kumar

... for the petitioners.

1. This revisional application is directed against an order of injunction dated 16th February, 2026 which has been extended from time to time and is still in subsistence. The defendants in the Title Suit No.2 of 2026 now pending before the Court of the learned Civil Judge, Senior Division, Kalimpong are the petitioners. The petitioners say that in the suit the following reliefs have been claimed :

- a) *A decree of declaration that the plaintiffs have the absolute right, title and interest over the Suit Property described in schedule A given hereunder;*
- b) *Recovery of possession of the suit plot of the plaintiffs fully described in the schedule B given hereunder from the wrongful and illegal possession of the defendants;*
- c) *Cancellation of the sale deeds being:*

- i) Sale deed dated December 13, 2013 being deed No.01280 for the year 2013 registered in the office of the Additional District Sub-Registrar, Kalimpong entered in Book – I, CD Volume No.5, pages from 927 to 937;*
- ii) Sale deed dated March 22, 2013 being Deed No.00451 for the year 2013 registered in the office of the Additional District Sub-Registrar, Kalimpong entered in Book – I, CD volume No.2, Page from 2611 to 2622;*
- iii) Sale Deed dated December 15, 2022 being Deed No.I-210402038/2022 for the year 2022 registered in the office of the Additional District Sub-Registrar, Kalimpong entered in Book – I, Volume No.2104-2022 at pages 42653 to 42677;*
- iv) Sale Deed dated October 11, 2023 being Deed No.210401526 registered in the office of the Additional District Sub-Registrar, Kalimpong entered in Book-I, Volume No.2104-2023, at pages 32653 to 32669;*
- v) Sale Deed dated October 11, 2023 being Deed No.210401527 registered in the office of the Additional District Sub-Registrar, Kalimpong entered in Book-I, Volume No.2104-2023, at pages 32636 to 32652;*
- vi) Gift Deed dated July 26, 2024 being Deed No.210401091 registered in the office of the Additional District Sub-Registrar, Kalimpong entered in Book-I, Volume No.2104-2024, at pages 26602 to 26631;*
- vii) Gift Deed dated August 01, 2024 being Deed No.210401093 for the year 2024*

registered in the office of the Additional District Sub-Registrar, Kalimpong entered in Book-I, Volume No.2104-2024, at pages 26738 to 26758;

- d) Recovery of damages of Rs.9,75,000/- towards occupation charges of the suit plot described in Schedule B occupied by the defendants calculated at the rate of Rs.5000/- per diem from August 01, 2025 till February 11, 2026;*
- e) Damages pendente lite @ Rs.5000/- per diem from February 12, 2026 till the disposal of the instant suit;*
- f) Cost of the suit.”*

2. There is neither any prayer for temporary injunction or for decree for permanent injunction. The petitioners say that an interim relief is granted in a suit in the aid of the permanent relief(s) claimed therein. In the absence of any relief for temporary or permanent injunction claimed in the suit, no ad interim order can or could have been passed in aid thereof. The ad interim order passed on 16th February, 2026 is set out hereunder for convenience :

“that the prayer for ad-interim injunction is allowed at this stage. The defendants i.e. defendant nos.1 to 6 are hereby restrained from transferring or alienating the suit property or from creating any third party

interest in the suit property and changing its nature and character till 16.03.2026. Plaintiffs to comply Order 39 rule 3(a) and (b). Plaintiff is also directed to file requisites for service of summons.”

3. On a perusal of the plaint it appears that the suit is for declaration, recovery of possession, cancellation of sale deeds and damages. In the said suit the Trial Court has enjoined the defendants from transferring or alienating the suit property or from creating any third party interest or to change the nature and character of the same. It is correct that there is no prayer for temporary or permanent injunction and the interim reliefs are in aid of the permanent reliefs claimed in the suit. The Court, however, has the discretion to mould the relief if the situation so demands. The Trial Court felt that there may be multiplicity of judicial proceedings unless the defendants were restrained from transferring or creating third party interest in respect of the suit property. It is not an absurd proposition that the defendants in order to render the suit infructuous may transfer the suit property thereby creating third party interest or third party rights in respect thereof. In such a situation the plaintiffs would be left remediless as the plaintiffs could not be able to obtain an effective decree or to

enforce the same. The learned Trial Court has rightly injuncted the defendants, the petitioners herein. I do not find any infirmity in the order.

4. The revisional application, therefore, fails and the same is dismissed, however, without any order as to costs.

(Arindam Mukherjee, J.)