

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

CO/26/2026

Smti. Kanak Radha Chatterjee & Others

Vs

Shri Sakthivel & Others

Mr. Arul Prasanth ... for the petitioners

Ms. Usha ... for the opposite party no.1

April 28, 2026
[SR]
Item No.7

1. Despite service, at the time of call, an adjournment is sought on behalf of the opposite party no.1.
2. However, due to the gross injustice being meted out to the petitioners, the matter is taken up for hearing.
3. The brief backdrop of the case is narrated below.
4. The defendants/petitioners are the owners of Survey Plot No.34/1/14, whereas the plaintiff/opposite party no.1 claims to own the adjacent Survey Plot No.34/1/15. In view of the plaintiff/opposite party no.1 having encroached upon the petitioners' property, an application was moved before the Tehsildar, who passed an eviction order against the plaintiff/opposite party no.1. The matter came up before a learned Single Judge of this Court, who also directed eviction. Thereafter, an appeal was preferred by the plaintiff/opposite party no.1 before the concerned Division Bench, wherein, although not interfering on merits with the eviction order passed by the learned Single Judge, the Division Bench directed the Tehsildar to give an opportunity of hearing to the plaintiff/opposite party no.1.

5. Such opportunity was given and thereafter the order of the Tehsildar was duly executed.

6. However, the woes of the petitioners started afresh thereafter. The plaintiff/opposite party No.1 re-encroached upon the Survey Plot No. 34/1/14 belonging to the defendants/petitioners.

7. Not stopping there, the plaintiff/opposite party No.1 filed a suit, which was dismissed on contest, leading to an appeal being preferred by the opposite party No.1, which was also dismissed. Against such dismissal, a second appeal was preferred by opposite party no. 1.

8. While dismissing the second appeal at the stage of hearing under Order 41 Rule 11 of the Code of Civil Procedure, the Division Bench observed, inter alia, that both the Trial Court and the Appellate Court, on examination of the documents and evidences, had come to a definite finding that Survey No.34/1/15 is under occupation of one Mathew Joseph. It was further observed that the said finding is based on material including affirmation of possession of Mathew Joseph in earlier proceedings between the parties.

9. Be that as it may, after such dismissal, the Tehsildar, vide Order dated April 22, 2025, again directed eviction of opposite party no.1 in favour of the petitioners, upon which the petitioners filed an application for implementation of such order by re-evicting the plaintiff/opposite party no.1.

10. A writ petition under Article 226 of the Constitution of India, filed by the opposite party no.1 against the said order of the Tehsildar, was dismissed. A mandamus appeal preferred

against the same was also dismissed, the Division Bench directing execution of the order of the Tehsildar.

11. Thereafter, since the order was not being implemented, a contempt application was filed.

12. However, the plaintiff/opposite party no.1 filed another suit challenging the order of the Deputy Commissioner which was passed 15 years ago. In such suit, *ex parte* ad interim status quo was granted on the basis of a temporary injunction application filed by opposite party no. 1. Thereafter, the present petitioners entered appearance and contested the temporary injunction application. Ultimately, on contest, the temporary injunction application was allowed, granting status quo in favour of the plaintiff/opposite party no.1.

13. Challenging the same, an appeal was preferred. By the impugned order dated April 6, 2022 passed in the appeal preferred by the present petitioners against the order of status quo, the learned District Judge turned down the prayer of the appellants/petitioners for stay of the impugned order of status quo. Assailing the said order, the present revision has been preferred.

14. From the annexures to the present revisional application as well as the arguments of the learned Counsel, it is evident that the plaintiff/opposite party No.1 has been repeatedly thwarting the efforts of the petitioners to get their legitimate rights, despite such rights having been vindicated on several occasions before several fora.

15. That apart, *prima facie* the suit is not even maintainable, being barred by limitation, since an order passed about 15 years ago was sought to be challenged therein.

16. Moreover, as rightly argued by learned counsel for the petitioners, the suit is also barred by *res judicata*.

17. In such view of the matter, this is one of the exceptional circumstances where even at the ad interim stage in a miscellaneous appeal filed against a status quo order, an order of stay of operation of the impugned order of status quo ought to have been granted, although under normal circumstances such stay orders are not granted at the premature stage of admission of the appeal.

18. In view of the above observations, this Court is of the firm opinion that the learned District Judge erred in law as well as on facts in refusing to grant stay of operation of the order of status quo dated March 17, 2026 passed by the learned Civil Judge, Senior Division at Port Blair in Title Suit No.133 of 2025.

19. Accordingly, CO/26/2026 is allowed, thereby setting aside the impugned order, bearing Order No. 2 dated April 6, 2022 passed by the learned District Judge (In-Charge) in Miscellaneous Appeal No. 05 of 2026 and granting stay of operation of the Order dated March 17, 2026 passed by the learned Civil Judge, Senior Division at Port Blair in Title Suit No.133 of 2025 till disposal of the said appeal.

20. There will be no order as to costs.

21. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)