

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Md.ShabbarRashidi

CO 1707 OF 2024

ChittaranjanBarai

Vs.

Madan Bhunia

For the petitioner : Mr. Rabindranath Mahato, Adv.
Mr. Aritra Shankar Ray, Adv.

Heard on : 02.09.2026

Judgment on : 02.09.2026

MD. SHABBAR RASHIDI, J.:-

1. Affidavit of service filed on behalf of the petitioner is taken on record.

2. None appears on behalf of the opposite party, despite service.

3. The instant revisional application has been filed by the plaintiff in Title Suit No. 292 of 2021 passed on April 23, 2024 in Misc. Appeal No. 56 of 2021. By the impugned judgment and

order, the learned First Appellate Court dismissed the Miscellaneous Appeal filed on behalf of the present petitioner.

4. It is submitted by learned advocate for the petitioner that the petitioner had filed a Title Suit seeking declaration and permanent injunction in respect of the suit property being Title Suit No. 292 of 2021 which was pending before the Court of learned Civil Judge (Junior Division), 1st Court, Paschim Medinipur. He also submits that the petitioner moved an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 seeking an injunction, which was refused by the learned trial Court by an order dated June 16, 2021 passed in Title Suit No. 292 of 2021.

5. Aggrieved by such order, the plaintiff/petitioner filed a miscellaneous case being Misc. Appeal No. 56 of 2021. Learned advocate for the petitioner further submits that during the pendency of the said miscellaneous appeal, the petitioner was able to make out a *prima facie* case for grant of temporary injunction and as such, the learned First Appellate Court in such Misc. Appeal No. 56 of 2021 passed an interim order dated July 31, 2021. By such order, the defendant/opposite party was restrained from making any construction over the B1 schedule property.

6. Learned advocate for the petitioner submits that ultimately such miscellaneous appeal was finally disposed of by the

impugned order. The petitioner has filed the present revisional application taking note of the interim order passed by the learned First Appellate Court. This Court also passed an order of ad interim order of injunction.

7. Learned advocate for the petitioner submits that since the petitioner was able to make out a prima facie case for an order of ad interim injunction which was invoked for some time during the pendency of miscellaneous appeal as well as the present proceeding, the impugned miscellaneous appeal deserved to be allowed.

8. Learned advocate for the petitioner further submits that the opposite party/defendant has been making constructions over the disputed properties and as such, an order of ad interim injunction was very much required. The learned First Appellate Court erroneously dismissed the miscellaneous appeal.

9. As noted above, none has appeared on behalf of the opposite party, despite service.

10. As it transpires from the materials on record, the present petitioner, as plaintiff, instituted Title Suit No. 292 of 2021 against the opposite party. Such Title Suit was filed for a decree declaring the title of the petitioner/plaintiff over the suit property described in Schedule B1 appended to the plaint. The petitioner also filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil

Procedure in such suit. However, upon hearing learned advocate for the petitioner, the learned trial Court refused to pass any ad interim order on such petition filed on behalf of the petitioner/plaintiff by an order passed on June 16, 2021.

11. Being aggrieved, the petitioner preferred a miscellaneous appeal being Misc. Appeal No. 56 of 2021 before the Court of learned District Judge at Midnapore. Subsequently, the Misc. Appeal stood transferred to the Court of learned Additional District Judge for disposal. The petitioner filed another application under order XXXIX Rules 1 and 2 of the Code of Civil Procedure in such miscellaneous appeal, seeking an injunction restraining the opposite party from making any construction over B1 Schedule properties.

12. It also transpires from the material on record that by an order dated July 31, 2021 passed in connection Misc. Appeal No. 56 of 2021, the learned District Judge passed an ad interim order of injunction. Such order which was passed by the learned District Judge in Misc. Appeal No. 56 of 2021 is recorded as follows:-

“Plot No. 853 and 852 are situated side by side. The plot no. 852 is the ancestral property of the plaintiff and Plot no. 853 belongs to several persons. It is alleged that the defendant has started illegal construction over B1 schedule of the property. I refer to the judgment of the Hon'ble Calcutta High Court passed in AIR 1965 Cal

148 where in the Hon'ble Court held that "Plaintiff as neighbour of defendant-defendant constructing his building in violation of Municipal Statutory Rules Plaintiff has a right to sue defendant and ask for an injunction".

Being satisfied prima facie with the right, title and interest of the appellant and apprehension of irreparable loss and injury to the appellant due to illegal construction of the respondent, this Appellate Court is of the view that the appellant is entitled to get an ad interim relief as prayed for.

Hence, the defendant/respondent is hereby restrained from making any construction over the B1 schedule property without getting the same converted, without obtaining permission from the local Panchayat and without leaving 0.90 meter space from the boundary line till next date."

13. Ultimately, by the impugned judgment and order, the First Appellate Court dismissed the Misc. Appeal no. 56 of 2021 with the following observations :-

"I once again reiterate that both parties must be heard first only then any order can be passed keeping the facts and circumstances in mind. Ad-interim order of injunction is generally procured by misleading courts and is being misused rampantly. There is a need of maintaining caution and carefulness before granting ad-interim injunction. Ld. Civil Judge has sparingly refused ad-interim injunction.

I am not inclined to interfere with the order dated 16.06.2021 passed by Ld. Civil Judge (Jr. Divn), Ist Court, PaschimMedinipur.

Hence, it is.”

14. Aggrieved by the impugned order, the petitioner has come up before this Court under Article 227 of the Constitution of India.

15. By an order passed on January 22, 2025, this Court granted an order of ad interim injunction in favour of the petitioner.

This Court held as follows:-

“7. Having heard the learned advocate appearing for the petitioner, and considering the materials on record including the title deeds and the record of rights, I am of the view that the instant revisional application is required to be heard. Taking note of the prima facie case made out and also noting that an interim order was subsisting in the matter between 31st July 2021 till disposal of the miscellaneous appeal as submitted by the petitioner, and also taking into consideration the balance of convenience and the irreparable loss that the petitioner would suffer in the event the injunction is not granted, there shall be an order of injunction restraining the opposite party from carrying out any further construction over the B1 schedule suit property being plot no. 853 wherein the petitioner also has interest on the basis of the title deed and Record of Rights, without getting the same converted, without obtaining permission from local panchayat and without leaving 0.90 meters space from the boundary line.”

16. Therefore, from the materials on record, it is evident that the learned First Appellate Court as well as this Court, at different points of time, came to a conclusion that the petitioner was able to demonstrate a *prima facie* case justifying an order of ad interim injunction in his favour. Such orders were granted from time to time. The first order was granted on July 31, 2021, and had continued till the disposal of the Misc. Appeal No. 56 of 2021 by the impugned order. Subsequently, this Court again came to a conclusion that there was a *prima facie* case in favour of the petitioner/plaintiff and by an order dated February 22, 2025, granted an interim order of injunction. Such order was subsisting till February 21, 2025. Subsequently, the petitioner never approached this court for extension of such order.

17. Therefore, from the materials on record, it appears that the petitioner/plaintiff has been able to demonstrate the *prima facie* case justifying an order of injunction at least twice. So far as the impugned judgment and order is concerned, it transpires that the Misc. Appeal No. 56 of 2021 was refused on the ground that the opposite party/defendant was not heard. The First Appellate Court had held that “*ad interim orders of injunction is generally procured by misleading Courts and is being misused rampantly*”. However, there is no substantive finding of the learned First Appellate Court

that its order dated July 31, 2021 was an outcome of misleading facts or fraud practiced by the present petitioner. Notably, the opposite party/defendant had entered appearance in the Misc. Appeal no. 56 of 2021 but failed to file any pleadings. The learned First Appellate Court had recorded in the impugned judgment and order to the effect that “the respondent/defendant and his advocate have not appeared and attached oral arguments despite availing sufficient opportunity.”

18. By the impugned judgment and order, the learned First Appellate Court affirmed the refusal of an interim order of injunction by the learned trial Court and directed the learned trial Court to decide the temporary injunction filed on behalf of the petitioner/plaintiff on merits as per law after giving both the parties sufficient opportunities. The Court is informed that the application under order XXXIX Rules 1 and 2 of the Code of Civil Procedure is yet to be decided by the learned trial Court as directed in the impugned order.

19. Therefore, taking into consideration that order of ad interim injunction was passed from time to time by the learned First Appellate Court as well as this Court holding that there was a *prima facie* case existing in favour of the petitioner/plaintiff. The suit

property is required to be preserved until injunction petition filed on behalf of the petitioner/plaintiff is adjudicated upon.

20. In such circumstances, the impugned judgement and order is hereby set aside and the order passed by the learned First Appellate Court on July 31, 2021 and by this Court on January 22, 2025, restraining the opposite party from carrying out any further construction over the B1 schedule suit property being plot no. 853 without getting the same converted, without obtaining permission from local Panchayat and leaving 0.90 meters space from the boundary line, shall remain operative till disposal of the plaintiff under order XXXIX Rules 1 and 2 of the Code of Civil Procedure by the learned trial Court.

21. CO 1707 of 2024 is, accordingly, **disposed of**.

22. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Md. Shabbar Rashidi, J.)