

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 29 of 2025

Pradip Jana

Vs.

Masema Bibi @ Nasera Bibi & Anr.

For the Petitioner	: Mr. Soumen Dutta Mr. Subham Dutta Ms. Juthika Barman	
		 advocates

For the Opposite Party	: Mr. Masud Mallik	
		...advocate

Reserved on	: 27.03.2025
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Judgment on	: 06.05.2025
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Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution is at the instance of the defendant and is directed against an order dated 12.12.2024 passed by the learned Civil Judge (Senior Division) Second Court, Contai in Misc. Appeal no. 24 of 2024 affirming the order dated August 17, 2024 passed by the learned Civil Judge (Junior Division) Second Court Contai, District Purba Medinipur in Title Suit No. 188 of 2023.
2. By the order impugned the learned Judge of the Appellate Court dismissed the Miscellaneous Appeal thereby affirming the order passed by the learned Trial Judge directing the parties to maintain status quo in respect of nature, character and possession of the suit property as mentioned in the "Ka" schedule of the plaint as on the date of the order till the disposal of the suit.
3. The opposite party herein filed a suit for declaration of the right of easement of absolute necessity in respect of "Ka" Schedule property. The opposite

party claims to be the owner and possessor of “A” Schedule property. The opposite party claims that she has no other alternative way for her ingress and egress from the “A” Scheduled property to the northern side village road save and except her right of way through “Ka” Schedule property of the petitioners over which the opposite party has acquired her absolute easement of necessity and easement of grant of user from time immemorial. The opposite party alleged that the petitioners are trying to deny the right of easement of opposite party through “Ka” Schedule property. They are giving threat to the opposite party for which the opposite party was compelled to file the instant suit.

4. In connection with the said suit the opposite party herein filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for an order of injunction restraining the petitioners from changing the nature and character of the suit property and also restraining the petitioners from creating any disturbance in the user of the “Ka” Schedule property by the opposite parties herein.
5. The petitioners herein contested the injunction application by filing a written objection thereto. It is the specific case of the petitioners in the said written objection that plot no. 350 is situated on the northern side of plot no. 347 and there is a government road to the north of plot no. 350. The petitioners claim to have purchased 4 decimals of land in plot no. 350 and 30.750 decimals in plot no. 347 by virtue of three registered deeds. After purchasing the said property the petitioners claim to have constructed a house thereon and also constructed a road to reach the village road from their land but the same is for their own use only. The petitioners have prayed for dismissal of the injunction application.
6. Learned Trial Judge, by an order dated being no. 20 dated August 17, 2024, allowed the application for temporary injunction directing both the parties to the suit to maintain status quo in respect of nature, character and possession of the suit property as mentioned in the “Ka” Schedule of the plaint as it existed as on the date of the order till the disposal of the suit.
7. Challenging the aforesaid order passed by the Trial Judge the petitioners herein preferred an appeal being Misc. Appeal No. 24 of 2024. The learned Civil Judge (Senior Division) Second Court, Contai, Dist- Purba Medinipur, by judgment and order dated December 12, 2024, dismissed the said Misc. Appeal.
8. Being aggrieved by the order of dismissal of the miscellaneous appeal, the defendant has approached this Court.

9. Mr. Dutta learned advocate appearing for the petitioner submitted that from the deeds by virtue of which the opposite party herein is claiming title, there is a reference of an alternative way for ingress and egress of the opposite party from her property to the main road. He submitted that since there exists an alternative passage, the opposite parties cannot claim the right of easement over the property of the petitioner. He further submitted that the opposite party herein claims to have acquired title in respect of the suit property by virtue of a deed of gift executed in the year 2012 and the instant suit has been filed only in the year 2023. He, thus, submitted that the statutory time limit mentioned under Section 15 of the Easement Act and Section 25 of the Limitation Act for acquisition of right of easement is 20 years and, therefore, the petitioner who acquired title only in the year 2012 does not have any cause of action for filing the instant suit. In support of such contention Mr. Dutta placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Manisha Mahendra Gala & Ors. vs. Shalini Bhagwan Avatramani & Ors.** reported at **2024 INSC 293**. Mr. Dutta further draws the attention of the Court to the inspection report in support of his contention that there is an alternative passage for ingress and egress of the opposite parties herein.
10. Per contra Mr. Masud Mallik, learned advocate appearing for the opposite party seriously disputed the submissions made by Mr. Dutta. He submitted that it is well settled that the Court should not hold mini trial at the stage of grant of temporary injunction and in support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Anand Prasad Agarwalla vs. Tarkeshwar Prasad & Ors.** reported at **(2001) 5 SCC 568**. He further submitted that since the learned trial judge and the learned Judge of the Appellate Court have passed an order of injunction, this Court should not interfere with such findings on an application under Article 227 of the Constitution of India in support of such contention he placed reliance upon a decision of a co-ordinate bench in the case of **Kamala Debi & ors. vs. Madan Mohan Nandi** reported at **2024 Supreme (Cal) 911**.
11. Heard the learned advocates for the parties and perused the materials placed.
12. The opposite parties herein have specifically stated in the injunction application that her predecessor in interest namely Mirza Samsuddin Begg and Mirza Abuddin Begg were using the plot nos. 347 and 350 being the "Ka" Schedule property for the purpose of ingress and egress from their property to the village road on the northern side of the property for more than 40 years and have acquired the right of easement by necessity. In the

gift deed being deed no. 2274 for the year 2012 by virtue of which the opposite party herein is claiming title in respect of “A Schedule” property, it has been stated that the petitioner have a right of access through the road on the eastern portion of the property running from the north-south direction for the purpose of ingress and egress from the A schedule property to the village road on the northern side.

13. Section 25 of the Limitation Act provides for acquisition of easement by prescription. It states that where any way to and from any building has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years, the right to such use of way shall be absolute and indefeasible.
14. Section 15 of the Indian Easements Act, 1882 provides for acquisition by prescription. It states that where a right of way has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption and for twenty years, the right of such access shall be absolute.
15. Section 19 of the Easement Act states that where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement, to the person in whose favour the transfer or devolution takes place.
16. The opposite party herein claims to have acquired right, title and interest in respect of A Schedule of the plaint by virtue of the Gift Deed Being No. 2274 for the year 2012. In the recitals of the said deed it has been stated that there exists a road on the eastern side of the gifted property i.e., the A schedule property running in North-South direction and having a width of 30 links. The said deed further records that the opposite party herein shall have a right to use the said road in the manner the same was continued to be used by the vendors.
17. The petitioner herein claims to have purchased the “Ka” schedule property being Dag No. 347 by virtue of registered deeds dated 10.08.18 and 22.02.21 and Dag No. 350 by a registered deed dated 27.04.2021.
18. The petitioner’s acquisition of title in respect of “Ka” schedule property is subsequent to the execution of the deed of gift in favour of the opposite party herein.
19. The opposite party herein has specifically claimed in the injunction application that her predecessors in interest were enjoying the Ka Schedule property for their ingress and egress from the A Scheduled property to the

northern side village road. That apart the learned Commissioner in the local inspection report has specifically stated that there is a mud path running over suit plot no. 347 and is connected with suit plot no. 350. From the field report in connection with the local inspection report it appears that adjacent to the eastern side of the property of the opposite party there is a mud road running in north-south direction over plot nos. 347 and 350 and ends with village road on the northern side of the plot no. 350. The petitioner herein in the written objection has also admitted that there exists a road on plot no. 347 which ends at the village road on the northern side of the plot no. 350. The petitioner claims that the said road was constructed by him for his own use, however, the opposite party herein on the other hand claims that the same was used for more than 40 years from the time of her predecessor in interest.

20. However, the existence of a mud road on the eastern side of the property of the opposite party herein running through plot nos. 347 and 350 in north-south direction and ending at the village road on the northern portion of plot no. 350 is not in dispute.
21. After going through the recitals of the gift deed, this Court is of the prima facie view that by virtue of transfer of A schedule property, the right of way through the eastern side road on "Ka" schedule property passed on to the opposite party herein.
22. For such reason, this Court is not inclined to accept the submission of Mr. Datta that the opposite party cannot claim easementary right over "Ka" schedule property as the deed of gift in her favour was executed only in the year 2012.
23. This Court, therefore, holds that the opposite parties herein have made out a strong prima facie case to go for trial. The balance of convenience and inconvenience is in favour of the opposite parties herein and the opposite parties herein would suffer irreparable loss and injury unless the order of injunction is passed in her favour as the dispute involved in the suit is with regard to the user of a road for the purpose of ingress and egress..
24. In **Anand Prasad** (supra) the Hon'ble Supreme Court held that the Court should not hold mini trial at the stage of grant of temporary injunction. The opposite parties herein has satisfied the three legal tests for grant of injunction. The learned Trial Judge has passed an order of injunction and such order has been affirmed by the learned Judge of the Appellate Court by assigning cogent reasons in support of the ultimate conclusion.

25. In ***Kamala Devi*** (supra) the Co-ordinate Bench reiterated the well settled proposition of law that the High Court cannot substitute its own opinion for that of the First Appellate Court unless it finds that the conclusion drawn by the Court below are erroneous or is based on inadmissible evidence.
26. The decision in the case of ***Manisha Mahendra Gala*** (supra) cannot come to the aid of the petitioner herein as the Hon'ble Supreme Court held that the use of the term "last many years" is not sufficient to mean enjoyment of the property for last 20 years. It was held that pleadings falls short of meeting out the legal requirement of acquiring easementary right through prescription. In the case on hand, it has been stated in the pleadings that the road is being used for more than 40 years.
27. For all the reasons as aforesaid this Court is not inclined to interfere with the impugned orders. CO No. 29 of 2025 accordingly stands dismissed. There shall be, however, no order as to costs.
28. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)