

Court No. 6
(265719)

19.02.2025
(AD 9)
(S. Banerjee)

CO 539 of 2025

Falguni Bhunia
Vs.
Mousumi Jana & Anr.

Ms. Usha Maiti
Mr. Sukanta Das

...for the petitioner

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against the judgment and order dated December 23, 2024 passed by the learned Additional District Judge, 6th Court, Paschim Medinipur in Miscellaneous Appeal No. 131 of 2023 thereby setting aside the order dated July 31, 2023 passed by the learned Civil Judge (Sr. Division), 2nd Court, Paschim Medinipur in Title Suit No. 258 of 2021.
2. The petitioner herein filed a suit for partition and alternatively for demarcation and for other consequential reliefs. In connection with the said suit, an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure was filed. The learned trial Judge by an order being No. 2 dated July 9, 2021 directed the parties to

maintain status quo over the schedule-mentioned suit property and the defendants were specifically directed not to make any kind of construction over the schedule-mentioned suit property. Thereafter, the learned trial Judge by order being no. 17 dated July 31, 2023 allowed the temporary injunction petition on contest in the form of a status quo by making the ad interim order absolute till the disposal of the suit.

3. Being aggrieved by such order the opposite parties herein preferred a Miscellaneous Appeal being no. 131 of 2023. The learned Judge of the first appellate Court after taking note of the case made out by the parties in their respective pleadings, have arrived at a prima facie finding that the property of Jogesh Chandra Samanta and Jagadish Chandra Samanta is equal in proportion and they had been occupying their separate portion since long. On the basis of such prima facie finding the learned Judge of the first appellate Court expressed its opinion that the suit for partition is not maintainable and the property can be demarcated by simple demarcation with the help of Amin or by filing a suit for demarcation of share only.

4. Ms. Maiti, learned advocate appearing for the petitioner, submits that the opposite parties herein took out an application being Order VII Rule 11 of the CPC which was, however, dismissed by the learned trial Judge. She further submits that such order has already attained finality. By drawing the attention of the Court to the injunction application Ms. Maiti submits that the defendants/opposite parties herein are trying to disturb the possession of the plaintiff over the suit property and trying to make new construction over the passage for ingress and egress from the suit property and trying to change the nature and character of the suit property.

5. After going through the averments made in the injunction application this Court finds that the primary grievance of the petitioner is that the opposite parties are trying to make construction over the passage for ingress and egress from the suit property. The passage for ingress and egress from the suit property to the municipal road on the southern side of the 'A' scheduled property, has not been specifically described in the Schedule to the injunction application.

6. Since the passage in respect of which the petitioner is claiming an injunction, has not been described in the injunction application, this Court is of the considered view that no vague order of injunction can be passed by the Court as the same cannot be implemented in case any violation is alleged.
7. In view thereof, this Court is not inclined to interfere with the order passed by the learned Additional District Judge, 6th Court, Paschim Medinipur on December 23, 2024 in Miscellaneous Appeal No. 131 of 2023. It is, however, made clear that the observations made by the learned ADJ in the order impugned was only the prima facie observations while disposing the said miscellaneous appeal and the learned trial Judge shall decide the suit without being influenced with such prima facie observations made in the impugned order.
8. With the above observations, CO 539 of 2025 is disposed of.

(Hiranmay Bhattacharyya, J.)