

Court No. 6
(265719)

13.03.2025
(AD 9)
(S. Banerjee)

CO 894 of 2025

Ansar Mondal & Ors.
Vs.
Aktar Hossain Mondal & Anr.

Mr. Mahammad Mahmud

...for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order dated February 18, 2025 passed by the learned District Judge, Purba Bardhaman in Misc. Appeal No. 22 of 2023 thereby reversing the order dated April 17, 2023 passed by the learned Civil Judge (Jr. Division), 1st Court at Purba Burdwan in Title Suit No. 212 of 2022.

The petitioners herein filed a suit for declaration of title and for permanent injunction being Title Suit No. 212 of 2022 before the learned Civil Judge (Jr. Division), 1st Court at Purba Bardhaman. The suit property is an agricultural land being Dag No. 459 measuring about 46 decimals.

The petitioners filed an application under Order 39 Rule 1 and 2 of the CPC before the learned trial Judge. After a contested hearing the learned trial

Judge, by an order dated April 17, 2023, directed the parties to maintain status quo in respect of the suit property as on the date of passing of the order in respect of nature, character, ownership and possession of the suit property till the disposal of the suit.

Being aggrieved against such order, the opposite parties preferred an appeal being Misc. Appeal No. 22 of 2023 and the learned District Judge, Purba Bardhaman by the order dated February 18, 2025 allowed the miscellaneous appeal thereby restraining the plaintiffs/petitioners herein from causing any disturbance to the possession of the defendants/opposite parties till the disposal of the suit.

The learned advocate appearing for the petitioners submits that the father of the parties executed a deed of exchange without obtaining the permission from the concerned District Judge. He submits that the learned trial Judge after considering the materials on record passed an order of status quo and the learned first appellate Court without considering the materials on record reversed the same and passed an order of injunction restraining the petitioners from disturbing the possession of the opposite parties herein.

The father of the parties, namely Moktar Mondal was the original owner of the suit plot. He executed a gift deed in favour of the plaintiffs/petitioners herein on June 8, 1982. The petitioners claim to be in possession of the suit property.

It is the specific case of the defendants/opposite parties herein that when the plaintiffs were minors, the said Moktar Mondal on behalf of the minors executed a deed of exchange on April 22, 1983 thereby transferring 20 decimals of land from the suit property in favour of the opposite party no. 1 and subsequently the opposite party no. 1 transferred the 10 decimals out of the same in favour of his son by a Hebanama on August 23, 2010.

After going through the plaint this Court finds that the deed of exchange is not under challenge in the suit. That apart a challenge to the deed of exchange ought to have been made within the prescribed time limit for challenging the same upon the petitioners attaining majority.

From the LR record of rights it appears that the defendants/opposite parties herein are in possession. Conversion certificate has also been issued by the concerned Block Land and Land Reforms Officer and the defendants/opposite parties herein have obtained

a plan from the local Panchayat authorities for construction.

This Court finds that the learned first appellate Court after considering the materials on record arrived at a factual finding that the defendants/opposite parties herein are in possession of the property in question. Such factual finding does not suffer from perversity.

The issue as to whether the petitioners or the opposite parties have right, title and interest in respect of the suit property and to what extent, is the matter which is to be adjudicated at the time of trial on evidence.

However, on the basis of the materials on record this Court is of the view that the defendants/opposite parties herein made out a strong prima facie case in their favour and the balance of convenience and inconvenience also tilts in their favour and unless an order of injunction is passed, the defendants/opposite parties would suffer irreparable loss and injury.

In the considered view of this Court the learned first appellate Court was right in allowing the application under Order 39 Rule 1 and 2 thereby restraining the plaintiffs/opposite parties from causing any disturbance to the possession of the

defendants/opposite parties till the disposal of the suit.

For such reason this Court is not inclined to interfere with the order impugned. Accordingly, CO 894 of 2025 stands dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)