

Court No. 6
(265719)

21.03.2025
(AD 21)
(S. Banerjee)

CO 1003 of 2025

Ladoo Bibi @ Ladli Bibi & Ors.
Vs.
Md. Rashid & Ors.

Mr. Piush Chaturvedi, Sr. Advocate
Mr. Suman Basu
Mr. Abdul Murshid
Ms. Debapriya Ghosh

...for the petitioners

Mr. Debayan Ghosh

...for the opposite party no. 1

Mr. Chaturvedi, learned Senior Advocate appearing for the petitioners files the certified copy of the order passed by the learned trial Court. Let the same be tagged with the record of this Court.

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order being no. 15 dated March 10, 2025 passed by the learned Additional District and Sessions Judge, 12th Court at Alipore in Misc. Appeal No. 204 of 2024. The petitioners herein filed a suit for a direction upon the opposite parties herein to modify and/or amend the development agreement dated December 31, 2019 and to put the actual decreetal physical measurement

i.e., 1 Cottah 15 Chittacks 18 square feet in place of 1 Cottah 9 Chittacks in respect of the premises no. 13, Shamsul Huda Road, Kolkata – 700 017, alternatively a decree for declaration that the development agreement dated December 31, 2019 executed between the parties is defective, inoperative, null and void, fraudulent and contradictory of the actual share of land and allotment of the agreement is not binding upon the plaintiffs. A decree for declaration that the development power of attorney dated March 16, 2021 is also null and void and not binding upon the plaintiffs was also prayed for. The plaintiffs also prayed for a decree for injunction against the defendants.

In connection with the said suit the petitioners filed an application under Order 39 Rule 1 and 2 praying for an injunction restraining the defendants/opposite parties from changing the nature and character of the suit property and restraining them from continuing with the construction work as well as from creating any third-party interest in the Schedule B property.

After filing the application for injunction the petitioner moved the application and prayed for grant of an ad interim order of injunction. The learned trial Judge by an order dated May 7, 2024 restrained both

the parties from changing the nature and character of the suit property till the application under Order 39 Rule 1 and 2 of the Code is disposed of. By the said order an application under Order 14 Rule 2 of the Code was allowed and preliminary issues were framed and the same were decided in the negative.

Challenging the order dated May 7, 2024, the opposite parties herein preferred a civil revision being CO 1779 of 2024 which was disposed of by an order dated May 16, 2024 by directing the learned Civil Judge (Jr. Division) 2nd Court at Alipore to decide the issue of granting ad interim relief within May 22, 2024 peremptorily without being influenced by the order passed by the coordinate Bench. An objection to the application for injunction was also directed to be filed within a specified time limit. Though the opposite parties herein who were the petitioners in CO 1779 of 2024, prayed for vacating the ad interim order of injunction, the coordinate Bench instead of interfering with the order of injunction at that stage expressed a view that the learned trial Judge should decide on the point of grant of ad interim injunction within May 22, 2024. However, in the written objection filed by the opposite parties herein to the application for injunction, a counter-prayer for injunction was made by the opposite parties herein. The said written objection also contains two

schedules of the property which was described in the said written objection being Schedule A and Schedule B.

After going through the property mentioned in Schedule A, this Court finds that the property described in Schedule A in the written objection to the injunction application is different from the property mentioned in Schedule A to the plaint and the injunction application.

The question that arises is whether the property mentioned in Schedule B to the plaint forms part and parcel of the property mentioned in Schedule A to the written objection against the injunction application. On a query of the Court the learned advocate appearing for the opposite parties could not satisfy this Court from the pleadings contained in the written objection as to whether the opposite party claims that the property mentioned in Schedule B to the plaint forms part and parcel of the property mentioned in Schedule A to the injunction application.

It is the case of the petitioner in the plaint that the Partition Commissioner handed over possession of piece and parcel of land whose physical measurement was 1 Cottah 15 Chittaks and 18 square feet together with some structures. The petitioners entered into a development agreement

with the defendant in respect of the aforesaid property but after verifying the contents of the development agreement the petitioners came to know that in the development agreement it has been mentioned that an actual physical measurement the area comes to 1 Cottah 9 Chittaks. The petitioners allege that fraud has been practiced upon them.

Thus the issue is whether the defendant was entrusted to develop the property whose physical measurement is 1 Cottah 15 Chittaks 18 square feet or 1 Cottah 9 Chittaks. Such an issue has to be decided in the suit.

However, Mr. Chaturvedi submits that the property mentioned in Schedule B to the plaint forms part of the property mentioned in Schedule A to the plaint as well as the injunction application. However, as observed hereinbefore the property mentioned in Schedule A to the plaint with that mentioned in Schedule A to the written objection is different. The issue is whether Schedule B to the plaint forms part and parcel of Schedule A to the written objection.

In course of hearing of this application the learned advocate for the opposite parties submits that only some preliminary work prior to raising of construction has been started but no effective construction has yet been made.

The learned trial Judge by an order dated May 22, 2024 directed the parties to maintain status quo in respect of the Schedule B property by not changing the nature and character of the suit property till the final disposal of the suit.

Being aggrieved by such order the opposite parties have preferred a miscellaneous appeal being no. 204 of 2024 and the learned Additional District Judge, 12th Court at Alipore disposed of the same by an order dated March 10, 2025 by directing the learned trial Judge to rehear the temporary injunction application of plaintiff along with the counter-temporary injunction application of the defendants and to dispose of both the injunction applications together by a single order after hearing both the parties but without granting any adjournment to either of the parties. However, the learned Judge of the appellate Court observed that the construction works of the defendants cannot be jeopardized in excess of 1 Cottah 9 Chitticks.

As observed hereinbefore there is a dispute as to the physical measurement of the property which is the subject-matter of development agreement between the petitioners and the developer. However, while developing the property pursuant to other development agreement, the defendant cannot

encroach upon the property of the petitioner. Therefore, while protecting the right of the developer to construct pursuant to any other agreement in which the petitioners are not parties, the defendant cannot utilize the property of the petitioners.

Mr. Chaturvedi, learned Senior Advocate, representing the petitioners submits that the claim for injunction of the petitioner is in respect of B Schedule property measuring about 1 Cottah 15 Chittacks 18 square feet more or less at 13, Shamsul Huda Road under Kareya Police Station, Kolkata – 700 017.

As already observed that there is a dispute as to whether the petitioners entrusted the defendants with regard to the construction work in respect of 1 Cottah 15 Chittacks 18 square feet or 1 Cottah 9 Chittacks.

However, this Court finds that since the parties to the suit have prayed for injunction against each other, the learned Judge of the first appellate court was right in directing the learned trial Judge to decide both the applications analogously and to dispose of the same by passing a common order.

For the reasons as aforesaid, the defendants/opposite parties herein shall be restrained from changing the nature and character in

respect of the property as specifically described in Schedule B to the plaint till the disposal of the application for injunction filed by the respective parties. It is, however, made clear that the learned trial Judge while deciding the said application shall not be influenced by any of the observations made by the learned first appellate Court in the order dated March 10, 2025 or in this order.

The learned Judge of the first appellate court is directed to transmit the trial court records to the court of the learned Civil Judge (Jr. Division) 2nd Court at Alipore forthwith if the same has not been remitted in the meantime.

Immediately upon receipt of the said records, the learned Civil Judge (Jr. Division) 2nd Court at Alipore shall fix a date of hearing of the injunction application filed by the respective parties and make an endeavour to see that the same is disposed of as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

With the above observation and directions, CO 1003 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)