

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. No. 1018 of 2025

Shaikh Hasan Ali

Versus

Sk. Mostafa Mondal & Ors.

For the Petitioner

: Mr. Probal Mukherjee,
Ld. Senior Advocate,
Mr. Ujjal Ray

For the Opposite Party

: Mr. Anit Kumar Rakshit
Mr. S. Rakshit

Heard on

: 11/06/2025

Judgment on

: 11/06/2025

Hiranmay Bhattacharyya , J. :

1. This application under Article 227 of the Constitution of India is at the instance of the defendant No.1 and is directed against an order being No.12 dated February 28, 2025 passed by the learned Civil Judge (Sr. Div.) at Chandernagore in Miscellaneous Appeal No.26 of 2024 heard analogously with Miscellaneous

Appeal No.25 of 2024. By the order impugned, the order of *status quo* passed by the learned trial judge was modified to a certain extent.

2. The opposite party Nos.1 and 2 filed a suit for declaration of their right, title, interest and possession in A-1 schedule property and for permanent injunction restraining the defendant No.1/petitioner herein from causing any disturbance in the peaceful possession of the plaintiffs in A1 schedule property and from making any construction in any portion of A1 schedule property and/or from changing its nature and character. The opposite party Nos.1 and 2 filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure *inter alia* praying for an order of temporary injunction.
3. The petitioner herein contested the application for temporary injunction by filing a written objection thereto. The learned trial judge by an order dated August 3, 2024, disposed of the application for temporary injunction thereby directing the parties to the lis to maintain *status quo* in respect of nature, character and possession of the suit property till the disposal of the said suit.
4. Being aggrieved by such order, petitioner preferred a Miscellaneous Appeal being No.26 of 2024. The proforma defendant Nos.2 and 3 also preferred a Miscellaneous Appeal being No.25 of 2024 challenging the selfsame order. The

aforesaid miscellaneous appeals were taken up for analogous hearing by the learned Civil Judge (Sr. Div.) at Chandernagore and the same were disposed of by a judgment and order dated February 28, 2025. By the said order the Miscellaneous Appeal No.26 of 2024 was dismissed on contest and the Miscellaneous Appeal No.25 of 2024 was allowed on contest by modifying the order dated August 3, 2024 passed by the learned trial judge to the extent that the order of *status quo* would be operative only upon the plaintiffs and the defendant No.1 instead of all the parties to the lis.

5. Being aggrieved by such order, the petitioner has approached this Court.
6. Mr. Mukherjee, learned senior advocate appearing for the petitioner submits that the parties have jointly applied for conversion of the classification of the land before the concerned revenue authority and before such authority the parties have filed a sketch map signed by all of them. He further submits that though initially there was a wrong recording of the share of the respective parties in the L.R. Record of Rights but subsequently the L.R. Record of Rights have been corrected and the correct shares of the parties are now reflected in the Record of Rights. He further submits that the petitioner has obtained a sanctioned plan on the basis of the sketch map signed by the respective parties and produced before the revenue authorities and,

therefore, the plaintiffs cannot raise any objection against raising construction by the defendant No.1 on the property which is marked as Lot-B in the sketch maps which are appearing at pages 55 to 59 of the civil revision application. He submits that the order of injunction passed by the learned Judge of the First Appellate Court is seriously affecting the right of the petitioners in respect of the suit property.

7. *Per contra*, Mr. Rakshit, learned advocate appearing for the opposite party submits that during the pendency of the suit the nature and character of the suit property should not be allowed to be altered. He submits that the learned trial judge after considering the materials on record passed an order of *status quo* and the learned Judge of the First Appellate Court after hearing the respective parties and considering the materials on record have modified the order of *status quo* to be operative only upon the plaintiffs and the defendant No.1. He submits that since there is a dispute with regard to the share of the respective parties in the suit property, the defendant No.1 should not be allowed to make any construction during the pendency of the suit.
8. Heard the learned advocates for the respective parties and perused the materials placed.
9. The plaintiffs have claimed that they have purchased 7.35 + 1.65 i.e. total quantum is 9 sataks of land from the erstwhile

owners in the suit property. Hasan Ali i.e. the defendant No.1 has purchased 6.84 sataks of land and the proforma defendants have purchased 11.16 sataks of land. In the plaint it was alleged that the defendant No.1 was trying to dispossess the plaintiff Nos.1 and 2 on the basis of the erroneous recording in the Record of Rights.

10. After going through the materials on record more particularly the schedule of the deeds and the Record of Rights which were produced before the learned trial judge, this Court finds that the dispute between the parties cropped up due to wrong recording of the share of the respective parties in the Record of Rights. In the L.R. Record of Rights an enhanced share of the defendant No.1 was recorded whereas a reduced quantum of share of the plaintiff Nos.1 and 2 was recorded in the Record of Rights.
11. A rough sketch map is appended to the plaint wherefrom this Court finds that on the extreme north, the A2 schedule property is situated and to the south of the A2 schedule property, the A1 schedule property is situated. On the extreme south, the rest property is situated. In the plaint it has been stated that A2 schedule property is the portion of the defendant No.1 and A1 schedule property belongs to the plaintiff Nos.1 and 2.
12. However, from the materials placed, it appears that the parties applied before the concerned Block Land and Land Reforms Officer for conversion of the classification of the said property as

recorded in the Record of Rights. Along with such application, a site plan as per the L.R. map was also filed. Such site plan appears to have been signed by all the parties to the suit and the same have been annexed at pages 55 to 59 of this civil revision application. Thus, this Court finds that the parties have admitted their respective shares as well as the portion of the suit property where they are in possession. From the site plan produced before the revenue authorities, this Court finds that on the extreme northern portion, the portion of the property marked as Lot-A and A1 are situated with specific demarcation. Lot-B is situated to the south of Lot-A and A1. Lot-C and C-1 are on the south of the Lot-B.

13. In course of hearing of this civil revision application Mr. Mukherjee, learned senior advocate appearing for the petitioner sought for leave to file a supplementary affidavit. Such leave is granted and the supplementary affidavit filed in Court today is taken on record. A copy of such supplementary affidavit has also been supplied to Mr. Rakshit, learned advocate for the opposite party.

14. From the supplementary affidavit this Court finds that the Record of Rights has been corrected. The learned advocates for the respective parties submit that the shares of the respective parties have now been correctly recorded in the L.R. Record of Rights which forms part of the supplementary affidavit.

15. This Court is of the *prima facie* view that the entire dispute between the parties with regard to the right to raise construction cropped up due to a wrong recording in the Record of Rights. Such dispute appears to have been resolved by passage of time. It is not in dispute that the character of the land has now been converted and construction on Lot-B property as mentioned in the sketch plan is permissible after such conversion has been allowed and the sanctioned plan has also been issued in favour of the defendant No.1. Sanctioned plan was issued in respect of the area, which the defendant No.1 is entitled to as per their title deeds.
16. After going through the materials on record, this Court finds that the portions of the suit property which the parties are in possession have been indicated in the sketch plan. In course of hearing, the learned advocates of the respective parties have also not recorded any dispute about the extent of the suit property which falls within the shares of the respective parties as indicated in the sketch plan.
17. It appears to this Court that the parties are in possession of portions of the suit property as indicated in the sketch map. Therefore, a party in possession of a particular portion should not be restrained from raising construction of the portion where such party is in possession.
18. For all the reasons as aforesaid, this Court is of the view that

the petitioners have made out a strong *prima facie* case for raising a construction on Lot-B property as indicated in the site plan which is appearing from pages 55 to 59 in this civil revision application. The order impugned stands modified to the extent by permitting the defendant No.1 to raise construction only on Lot-B property strictly in accordance with the sanctioned plan.

19. With the above observations CO 1018 of 2025 stands disposed of.
20. There will be no order as to costs.
21. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)