

Sl. No.91
15.07.2025
Suman
Ct.06

C.O. 1657 of 2025

Tarakeswar Mishra and Ors.
Versus
Khamarpara Social and Educational Welfare Trust
represented by Dinanath Prasad and Ors.

Mr. Aniruddha Chatterjee, Sr. Adv.
Ms. Moumita Dhar
...for the petitioners

Mr. Supriyo Chattopadhyay
Mr. Sudip Kumar Maiti
Ms. Debosri Chatterjee
...for O.P. No.5.

Mr. Mahammad Mahmud
..for O.P. Nos. 1 to 4.

This application under Article 227 of the Constitution of India is at the instance of defendant nos. 2 to 6 and is directed against an order dated 6th April, 2025 passed by the learned Additional District Judge Fast Track Court-II, Howrah in Miscellaneous Appeal No.193 of 2023 thereafter affirming the order dated October 12, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Howrah in Title Suit No.1476 of 2023.

The opposite party Nos. 1 to 4 herein filed a suit for declaration that the suit property which is recorded as “Anumati Dakhaldar” is the property of Khamarpara Jagriti Hindi Vidyamandir High School and the school

has got a permanent right, title and interest and license/anumati has become irrecoverable. The aforesaid opposite parties have also prayed for a decree for permanent injunction restraining the petitioners from disturbing the peaceful possession of the school in respect of the suit property. After filing the said suit, the plaintiffs filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure and moved the prayer for ad interim injunction. The learned Trial Judge by an order dated 12th October, 2023 passed an ad interim order of injunction.

Being aggrieved by such order, the petitioners preferred a Miscellaneous Appeal which stood dismissed by the order impugned.

Mr. Chatterjee, learned senior advocate representing the petitioners submits that the suit has been filed by a trust and certain other private parties and the school is not the plaintiff who has approached the Court for protection of its property. He further submits that the learned Judge of the Appellate Court without deciding the appeal on its merit has mechanically affirmed the order passed by the Trial Judge.

Mr. Chattopadhyay, learned advocate appearing for the opposite parties submits that the plaintiff No.2 is the guardian representative of the Committee of the school and plaintiff Nos. 3 and 4 are the guardians of

the students of the said school. He submits that an application under Order 1 Rule 8 of the Code of Civil Procedure has been filed before the learned Trial Judge and the same is pending consideration. He further submits that filing of the suit without obtaining leave under Order 1 Rule 8 is a curable defect and the same can be cured at a subsequent stage.

Heard the learned advocates for the parties and perused the materials placed.

After going through the order of the learned Judge of the First Appellate Court, this Court finds that the order of the learned Trial Judge has been set out by the learned Judge of the First Appellate Court in the order impugned and thereafter passed the order that the miscellaneous appeal has been dismissed.

Learned Judge of the Appellate Court did not assign any independent reasons as to why the ad interim order of injunction should not be interfered with. The order passed by the learned Judge Appellate Court is a non-speaking order and for such reason, the same is liable to be set aside.

After going through the order passed by the learned Trial Judge, this Court finds that the learned Trial Judge proceeded on the basis of that the suit has been filed by the school. However, it appears from the plaint that the school is not the plaintiff in Title Suit No.1476 of 2023. The first plaintiff is a trust represented

by its trustees. Plaintiff No.2 claims to be the guardian representative of the Committee of the said school and the plaintiff nos. 3 and 4 are claiming to be the guardians of the wards studying in the said school. The school has not approached for protection of the property of the suit. The learned Trial Judge did not consider such aspect of the matter and passed an ad interim order under an impression that the school is the plaintiff. Thus, this Court finds that there was total non-application of mind by the learned Trial Judge while passing the ad interim order of injunction and the learned Judge of the appellate Court mechanically dismissed the Miscellaneous Appeal.

For such reason, the same is liable to be set aside.

In view of the aforesaid discussion, the order impugned are set aside.

At this stage, Mr. Chattopadhyay, learned advocate appearing for the opposite parties prays for a direction upon the learned Trial Judge to dispose of the application under Order 1 Rule 8 of the Code of Civil Procedure as expeditiously as possible.

In the light of the submission of Mr. Chattopadhyay, the learned Trial Judge is requested to make an endeavour to dispose of the application under Order 1 Rule 8 of the Code of Civil Procedure as expeditiously as possible without granting any unnecessary adjournment on behalf of the parties.

The learned Trial Judge is directed to proceed with the suit in accordance with law.

Accordingly, **C.O. 1657 of 2025** is allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Hiranmay Bhattacharyya, J.)