

**IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION  
APPELLATE SIDE**

**Before:**

**The Hon'ble Justice Hiranmay Bhattacharyya**

**C.O. 1811 of 2025  
Shimna Engineering Pvt. Ltd.  
Vs.  
Subhika Singh & Anr.**

For the Petitioner : Mr. Saptangshu Basu, Sr. Adv.  
Mr. Abhrotosh Majumder, Sr. Adv.  
Mr. Aniruddha Chatterjee, Sr. Adv.  
Mr. Siddhartha Banerjee  
Ms. Saheli Sen  
Mr. Abir Lal Chakravorty  
Mr. Rajib Mollick  
Mf. Subham Chatterjee  
..... advocates

For the Opposite Party No. 1 : Mr. Sabyasachi Chowdhury, Sr. Adv.  
Mr. Srijib Chakraborty  
Ms. S. Mukherjee  
Mr. Amit Kumar Nag  
Mr. Subhajit Ghosh  
..... advocates

Reserved on : 22.05.2025

Judgment on : 04.07.2025

**Hiranmay Bhattacharyya, J.:-**

1. This application under Article 227 of the Constitution of India is at the instance of the second defendant and is directed against an order dated May 15, 2025 passed by the learned District Judge, 24 Parganas (South) at Alipore in Misc. Appeal No. 147 of 2025 reversing the order dated May 8, 2025 passed by the learned Civil Judge, Senior Division, Second Court at Alipore in Title Suit No. 664 of 2025.
2. By the order dated May 15, 2025 the learned District Judge, 24 Parganas (South) at Alipore allowed the prayer for ad interim injunction thereby directing the parties to maintain status quo in respect of possession and

usage, specifically during ingress and egress to the suit property till the next date.

3. The opposite party herein filed a suit for permanent injunction against the petitioner and the proforma opposite party before the learned Civil Judge, Senior Division, Second Court at Alipore which was registered as Title Suit No. 664 of 2025. In connection with the said suit, the opposite party filed an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure and the opposite parties prayed for an ad interim order of injunction before the learned Trial Judge on May 8, 2025.
4. The learned Trial Judge by an order dated May 8, 2025 refused to pass any ad interim order of injunction.
5. Being aggrieved, by the refusal to pass any ad interim order of injunction by the learned Trial Judge, the opposite party no. 1 herein preferred an appeal being Misc. Appeal No. 147 of 2025 before the learned District Judge, 24 Parganas (South) at Alipore and filed an application for temporary injunction in connection with the said Miscellaneous Appeal. The learned Judge of the Appellate Court, by an order dated May 15, 2025, passed an ad interim order of status quo.
6. Being aggrieved by the order dated May 15, 2025 the second defendant has approached this Court.
7. Mr. Basu, learned Senior Advocate appearing in support of the Civil Revision Application contended that the instant suit for permanent injunction at the instance of a person claiming to be the daughter of a tenant of the suit property is not maintainable. He further contended that the opposite party no. 1 herein has not claimed any right or interest in respect of the suit property and has sought to canvass the case of a third party in the suit. He contended that the learned Trial Judge after noting that the original tenant has not come forward claiming himself to be a tenant in the suit property rejected the prayer for ad interim injunction. Mr. Basu contended that once the Court of first instance refused to grant relief of temporary injunction by a speaking order, the Appellate Court would be loath to interfere under such circumstances. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Skyline Education Institute (India) Private Limited vs. S.L. Vaswani and Another** reported at **(2010) 2 SCC 142**. He therefore, submitted that when the learned Trial Judge refused to pass an ad interim injunction, the learned Judge of the Appellate Court ought not to have interfered with such order. Mr. Basu placed reliance upon a decision of the Hon'ble Division Bench of this Court in the case of **Calcutta Swimming**

**Club vs. Lalit Singh & Ors.** reported at **(2009) 2 CHN 379 (DB)**. In support of his contention that a plaintiff cannot file a suit for protection of right of a third party.

8. Mr. Sabyasachi Chowdhury learned Senior advocate appearing for the opposite party seriously disputed the contentions raised by Mr. Basu. He contended that the plaintiff is in occupation of the suit property and is staying in joint mess along with her father and mother. He submitted that the father of the plaintiff was inducted into the suit property as a tenant and since the father of the plaintiff had to undergo a major surgery for which his movement has been restricted, the plaintiff had to file the instant suit for permanent injunction restraining the defendant and their men, servants and agents from dispossessing the plaintiff without due process of law from the suit property. He contended that the defendant threatened to invade the plaintiff's right to an enjoyment of the property for which the instant suit was filed.
9. He contended that such a suit is maintainable under Section 38 of the Specific Relief Act. He further contended that the plaintiff is a licensee of the tenant and, therefore, has a right to enjoy the said property and for protection of her possession a suit for permanent injunction is maintainable. He submitted that the plaintiff has produced documents in support of her possession in respect of the suit property and the learned Judge of the Appellate Court after considering the evidence available on record held that the plaintiff has prima facie established her possession in the suit property. He contended that the learned Judge of the Appellate Court passed an ad interim order of injunction by a speaking order and the same should not be interfered with by this Court under Article 227 of the Constitution of India. Mr. Chowdhury contended that in a suit under Section 38 of the Specific Relief Act the plaintiff is only required to prove that he is in settled possession of the suit property and not the ownership thereof. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Sunkamma (Dead) By legal representatives vs. S. Pusparaj (Dead) by legal representatives** reported at **(2018) 12 SCC 647**.
10. Mr. Chowdhury further contended that the respective rights of the parties shall have to be decided at the time of final disposal of the suit and in the meantime and interim protection was rightly given to the plaintiff against the threatened action of the defendant to evict her without following the due process of law. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Lakshmi Alias**

**Bhagyalakshmi and another vs. E. Jayaram (Dead) by L.R.** reported at (2013) 9 SCC 311.

11. Heard the learned advocates for the parties and perused the materials placed.
12. The primary object of filing the instant suit is to continue to remain in possession with the intervention of the Court. A party to the suit is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the Court. The Court grants such relief according to legal principles-ex debito justitiae. It is well settled that before passing an order of injunction, the Court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.
13. The Hon'ble Supreme Court in the case of **Shiv Kumar Chadha vs. Municipal Corporation of Delhi** reported at (1993) 3 SCC 161 laid down the principles for grant of injunction. The Hon'ble Supreme Court held thus-

*"30. It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the court. In such a suit the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles — ex debito justitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him."* (emphasis supplied)

14. It follows from the aforesaid decision, that before passing an order of injunction, the Court has also to consider the question of maintainability of the suit.
15. The opposite party no. 1 herein has prayed for an order of injunction restraining the petitioner and/or their men, servants and/or agents from

dispossessing the opposite party no. 1 without due process of law from the suit property.

16. The opposite party no. 1 herein claims that her father was inducted into the suit property by one Rashendra Nath Tagore and her father used to pay rent to the said Rashendra Nath Tagore.
17. The plaintiff claimed that the said Rashendra Nath Tagore passed away in the year 2013 leaving behind a will wherein one Ms. Sreelekha Tagore was appointed as an executrix and that the father of the plaintiff used to deposit rent before the office of the Rent Controller in the name of Sreelekha Tagore. The Opposite Party no. 1 claims to be in occupation of the suit property and staying in joint mess along with his mother and father. The opposite party no. 1 claims that her father had to undergo a major surgery on or about July 2024 for which his movement has been restricted.
18. It has been further stated in the plaint that the defendant no. 2 through the defendant no. 1 is claiming to be the owner of the suit property and they are constantly attempting to disturb the possession of the plaintiff and her father. According to the plaintiff on or about 26<sup>th</sup> April, 2025 some men claiming to be the representatives of the defendant no. 2 along with the defendant no. 1 attempted to enter inside the suit property and upon objecting, the plaintiff and her father were manhandled and threatened, for which the plaintiff lodged a complaint before the local police station and thereafter she filed the instant suit.
19. Mr. Chaudhury would contend that the instant suit for permanent injunction is maintainable under Section 38 of the Specific Relief Act.
20. Section 38(1) of the Specific Relief Act states that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour whether expressly or by implication.
21. Section 2(a) defines the term "Obligation" to include every duty enforceable by law.
22. Such obligation may arise out of contract or may be in the nature of trust or any other legal obligation. If such an obligation arises out of contract, the Court will be guided by the principles relating to specific performance of contract. If, however, the injunction is sought for against invasion of the plaintiff's right to property or enjoyment of property, Sub-section 3 of Section 38 shall come into play and the Court may grant a perpetual injunction in cases mentioned under Clauses (a) to (d) thereof.

23. Though the tenant may have a right to protect his possession in the tenanted property in case there is a breach of obligation by the land lord but no right and/or interest can accrue in favour of the members of the family of a tenant in respect of tenanted property so as to enable him to file a suit against a person against whom there is no allegation of any breach of obligation.
24. The opposite party herein failed to make out a case of breach of any legal obligation for prevention of which injunction should be granted as the opposite party has not claimed existence of any legal relationship between her and the petitioner which may give rise to a legal obligation.
25. The Court has to now consider whether the plaintiff could make out a case of invasion or a threat of invasion of her right to property or its enjoyment.
26. The plaintiff has not claimed to be the owner of the suit property. The plaintiff is neither a tenant nor a licensee nor even claiming to be a person in unlawful possession of the suit property.
27. The plaintiff claims to be in occupation of the suit property as a family member of a tenant. No right or interest in an immovable property accrues in favour of the family member of a tenant. The opposite party no. 1 has produced her Voter Identity Card and Driving Licence in support of her claim that she is in possession of the suit property for a long time. Even by long possession, the family member of a tenant would not acquire any right or interest in the property.
28. The protection of the Court can be granted or extended to a person who has acquired a right or interest for himself /herself in the suit property.
29. The opposite party no. 1 prayed for protecting her possession in the suit property through the intervention of the Court.
30. The Court can grant injunction where there is an invasion of the plaintiff's right to or enjoyment of property. To the mind of this Court, no right to the property has been asserted by the plaintiff in the suit.
31. The Hon'ble Division Bench in **Calcutta Swimming Club** (supra) has held that a plaintiff cannot file a suit alleging that by action of the defendant, although none of his rights is infringed, yet somebody else's right is going to be affected and such right of the third party would be affected.
32. In the plaint, the opposite party herein has sought to highlight that her father is a tenant in respect of the suit property and the defendants are trying to disturb the possession of herself and her father. By applying the

ratio of **Calcutta Swimming Club** (supra), this Court is of the prima facie view that the instant suit is not maintainable in the eye of law.

33. In the case on hand the opposite party no. 1 has claimed that her father is the tenant in respect of the suit property. Even assuming that there can be a breach of obligation of a tenancy agreement between the father of the plaintiff and the defendant, the same cannot give rise to a cause of action for filing the instant suit by a daughter of a tenant.
34. To the mind of this Court, plaintiff has not asserted any right in respect of the suit property and its infringement thereof by defendants or a threat to infringe that right by the defendant against whom the suit has been instituted.
35. Thus, this Court is of the prima facie view that the plaintiff has failed to prove that right to sue accrued in her favour.
36. The learned Judge of the Appellate Court held that the plaintiff is in settled possession of the suit property on the basis of the rent receipts, electricity bill and gas connection which all stands in the name of the father of the defendant and not of the plaintiff. That apart, the voter identity card and the driving license cannot accrue any right to the property and unless the plaintiff asserts a legal right to the property, an order of injunction cannot be passed to protect her occupation in the suit premises.
37. The learned Judge of the Appellate Court took note of the decision reported in **(2004) 1 SCC 769** in the case of **Rama Gowda vs. M. Varadappa Naidu** and applied the proposition of law that even a trespasser in a property is entitled to protection of his possession subject to the consequence of any due process of law and observed that the plaintiff is in settled possession.
38. In Paragraph 9 of **Rama Gowda** (supra), it was held that a casual act of possession would not have the effect of interrupting the possession of the rightful owner and the rightful owner may reenter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost.
39. In **Rama Gowda** (supra), the Hon'ble Supreme Court took note of the **Puran Singh's** case reported at **(1975) 4 SCC 518** wherein the tests to be adopted as a working rule for determining the attributes of "settled possession" has been laid down.
40. The plaintiff/ opposite party no. 1 failed to bring her case within the expression "settled possession" and the learned judge of the Appellate Court

without applying the tests laid down in Puran Singh's case held the occupation of a person claiming to be a licensee of a third party to the suit to be that of "settled possession".

41. Mere occupation of a property by a person as an agent or a servant of a third party, who may have a right or interest in the property, will not amount to actual physical possession. The case made out by the Opposite Party no. 1 do not satisfy the tests laid down for holding even prima facie that the opposite party is in "settled possession".
42. Mere possession of an immovable property as a licensee of a tenant cannot be said to be lawful possession. This Court holds that the possession of the opposite party no. 1 cannot fall either within the expression "settled possession" or lawful possession.
43. The learned Trial Judge in exercise of its discretion refused to grant the ad interim injunction. Such exercise of discretion is based upon objective consideration of materials on record and the ultimate conclusion is supported by cogent reasons. In view thereof, this Court is of the considered view that the appellate Court ought not to have interfered with the order of the Trial Judge in view of the observations made in **Skyline Education Institute** (supra) wherein it has been held thus-

*"22. The ratio of the abovenoted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."*

44. The learned Trial Judge was right in noting that the original tenant of the suit property has not filed the suit claiming himself to be a tenant in respect of the suit property and also that the father of the plaintiff has neither being made a party nor the plaintiff has filed any document to show that her father authorised her to file the instant suit.
45. In **Lakshmi** (supra) an injunction was passed to protect the possession of a tenant in respect of the suit property against threatened action of the defendants to evict her without filing the due process of law. The said decision being distinguishable on facts cannot come to the aid of the opposite parties.

46. There is no quarrel to the proposition of law laid down in **Sunkamma** (supra) that a suit for permanent injunction is to be decided on lawful possession and not ownership. This Court has already held that the possession of the opposite party no. 1 cannot be said to be a lawful possession. For such reason the decision in **Sunkamma** (supra) cannot be applied to the facts of the case on hand.
47. For all the reasons as aforesaid this Court is inclined to interfere with the order impugned. The order dated 15.05.2025 passed by the learned District Judge, 24 Parganas (S) in Misc. Appeal No. 147 of 2025 stands set aside.
48. CO 1811 of 2025 stands allowed without, however, no order as to costs.
49. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

**(HIRANMAY BHATTACHARYYA, J.)**