

10 18.06.2025
NB Ct. 06

CO 1890 of 2025

Sati Bhusan Mukherjee
Vs.
Shakti Bhusan Mukherjee & Anr.

Mr. Tanmoy Mukherjee,
Mr. Prasanta Bishal,
Mr. Shivaji Mitra.
...for the petitioner.

Mr. Soumyajyoti Sen,
Mr. Tapan Kumar Mukherjee,
Ms. Indrani Nandi.
....for the opposite parties.

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being Order No.22 dated April 09, 2025 passed by the learned Civil Judge, Senior Division, Serampore, District-Hooghly in Title Suit No.34 of 2024.

By the order impugned, the application under Section 151 of the Code of Civil Procedure at the instance of the petitioner praying for police help for implementation of the order dated May 10, 2024 stood rejected.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the opposite parties herein have parked the car of outsiders in the temporary structure in violation of the order of injunction dated May 10, 2024. By drawing the attention of the Court to a photograph annexed at page 60 of this revision application, Mr. Mukherjee submits that the opposite parties herein have invited third parties/outside

approach the opposite parties for parking cars in the temporary structure upon payment of rent.

Mr. Mukherjee further submits that the learned Trial Judge even after accepting the contention of the petitioner that parking of the vehicle of the learned advocate amounts to violation of the order, rejected such application without assigning any reasons.

Mr. Tapan Kumar Mukhopadhyay, learned advocate appears for the opposite parties. He submits that the defendants were restrained from letting out the temporary structure for the purpose of car parking to the outsiders on rent. He submits that his car was being parked by the opposite parties at the temporary structure only for the purpose of cleaning. He further submits that he is a relative of the plaintiff and the defendant and, therefore, he cannot be considered to be an outsider. He further submits that no document has been produced by the petitioners in support of their case that the temporary structure was being let out for the purpose of car parking upon payment of rent. He further submits that the order of injunction did not restrain the opposite parties from using the said structure from parking of the car of the opposite parties.

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

The petitioner filed a suit for declaration that the deed of gift being No.1655 for the year 1996 is binding upon the opposite parties and for a further declaration restraining the opposite parties from making construction of a parking

space/garage in the vacant portion of the 'C' schedule property and for permanent injunction restraining the defendants and their men and agent from making construction of any car/vehicle parking space or garage in the vacant portion of the 'C' schedule property.

On an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure being filed, the learned Trial Judge by an order dated May 10, 2024 passed an order restraining the defendants/the opposite parties herein from letting out the temporary structure for the purpose of car parking to the outsiders on rent till the disposal of the suit. However, there was no order of injunction for using the said structure for own car parking.

It is not the case of the opposite parties that they are using the temporary structure for the purpose of parking their own car. No documents have been produced before this Court to show that the defendant owns a car.

The learned advocate appearing for the opposite parties submits that his car was being kept in the temporary structure only for the purpose of cleaning the same. He further submits that his house is adjacent to the suit property, which also has a garage.

It is not in dispute that the learned advocate whose car was kept in the temporary structure is not a party to the suit. The expression "outsiders" used in the order dated May 10, 2024 has to be construed as third parties who are not parties to the suit. A learned advocate representing a party in a proceeding who is staying in an adjacent house would

undoubtedly fall within the expression “outsiders” used in the aforesaid order as rightly noted by the learned trial Judge. Merely because the learned advocate claims to be the relative of the parties, that by itself do not give him right to park his car in the temporary shed in the teeth of an order of injunction. It is very difficult for the petitioner being a stranger to any agreement/arrangement between the opposite parties and their learned advocate to prove payment of rent for allowing parking of cars in the temporary shed. It is for the opposite parties to prove under what arrangement be allowed parking of the car of their learned advocate at the temporary shed.

The learned advocate for the opposite party submitted that his car was kept in the temporary structure for the purpose of cleaning the same. When a car of a third party who is not a party to the suit is found to be present in the scheduled property, it is for the defendants to prove that the same was not permitted for upon payment of rent.

Be that as it may, the order of injunction restrained the defendant from parking car of the outsiders in the temporary structure.

The learned Trial Judge accepted the contention of the plaintiff that mere parking of the vehicle of the learned advocate tantamounts to violation of the order. After arriving at the said finding, the learned Trial Judge ought not to be rejected the application for police help. It was for the learned Trial Judge to pass an order for implementation of its own order. From the materials on record as well as from the submission advanced by Mr. Tapan Kumar Mukherjee, learned

advocate for the opposite parties, it is evident that the car of the learned advocate is kept in the temporary shed. For such reason, this Court is inclined to interfere with the order impugned. The application under Section 151 of the Code of Civil Procedure stands allowed.

The Officer-in-Charge of the local police station is directed to implement the Order No.9 dated May 10, 2025 passed by the learned Civil Judge, Senior Division, Serampore in Title Suit No.34 of 2024.

With the above observations and directions, **CO 1890 of 2025** stands allowed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)