

D/L- 8 & 9
18/06/2025
Ct. No.-6
Aritra

C.O. 1899 of 2025

Sayed Afroz Azam
Vs.
Sayed Sarfaaraz Azam & Anr.
With
C.O. 3683 of 2024
Sayed Afroz Azam
Vs.
Sayed Sarfaaraz Azam & Anr.

Mr. Meghnad Datta
Mr. S.C. Srivastava
Mr. Sk. Siddique Rahaman
...for the petitioner

Mr. Sukanta Das
....for the opposite party

In Re:-C.O. 3683 of 2024

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.24 dated September 24, 2024 passed by the learned Civil Judge (Sr. Div.), 3rd Court, Sadar, District-Paschim Medinipur in Title Suit No.271 of 2024.

By the order impugned, the application for local inspection at the instance of the petitioner was allowed and the application under Section 151 of the Code of Civil Procedure filed by the plaintiff/opposite party herein was also allowed.

The petitioner is really aggrieved by the portion of the order by which the application under Section 151 of

the Code of Civil Procedure filed by the plaintiff/opposite party herein stood allowed.

Mr. Datta, learned advocate appearing for the petitioner submits that the learned trial judge passed an order of *status quo* on June 26, 2024. He submits that in the order of *status quo* it has not been stated that the plaintiff is in possession of the terrace and the garage. He further submits that the duplicate key of the padlock of the garage has been supplied to the plaintiff. He further submits that the defendant No.1/petitioner herein is in exclusive possession of the terrace and for such reason the defendant No.1 has put a padlock on the entrance door of the terrace. He further submits that the resultant effect of the order impugned is that the order of *status quo* has been modified. He submits that the issue with regard to possession of respective portions of the suit property has to be decided at the time of final hearing of the suit for partition and the same cannot be decided at the interlocutory stage.

Mr. Das, learned advocate appears for the plaintiff/opposite party herein. He submits that the duplicate key of the padlock of the garage has not been handed over to the plaintiff. He further submits that at the time of passing of the order of *status quo* the defendant No.1 was not in exclusive possession of the terrace and the garage.

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

In the plaint of the instant suit as well as in the order of injunction it has been specifically stated that A schedule property is the residential house and the plaintiff is residing in the ground floor and the defendant No.2 is residing in the first floor. It has been further stated in the plaint that the defendant No.1 was causing serious problem in the ejmal possession and has put a padlock in the different portions of the property. The plaintiff removed the same and thereafter the defendant No.1 filed a criminal case with false allegations.

On a query of the Court, Mr. Datta, learned advocate appearing for the petitioner could not point out any specific averment in the written objection to the injunction application wherein the defendant No.1 has claimed to be in exclusive possession of the terrace and the garage.

In the application under Section 151 of the Code of Civil Procedure praying for police help, the plaintiff/opposite party herein have alleged that after passing of the order of temporary injunction the defendant No.1 has most illegally put padlock on the entrance of the roof and the garage in the ground floor. Thus, it was also not the case of the defendant No.1 in the written objection to the injunction application that the defendant No.1 was in exclusive possession of the

terrace and the garage. The learned trial judge was right in holding that the terrace cannot be said to be the exclusive property of the defendant No.1. The learned trial judge was right in holding that a co-sharer has every right in every inches of the property and also that the plaintiff who is residing in the ground floor cannot be debarred from using the terrace when the 'A' schedule property is undivided.

On a query of the Court, Mr. Datta, learned appearing for the petitioner, upon instructions, submits that the duplicate key of the garage has been handed over to the plaintiff. Such submission is disputed by the learned advocate appearing for the plaintiff/opposite party herein. The fact remains that when it is the specific case of the defendant No.1 that the duplicate key of the garage has been handed over to the plaintiff, the defendant No.1 cannot have any objection with regard to the handing over the key of the padlock of the garage door.

The learned trial judge has assigned cogent reasons for allowing the application under Section 151 of the Code of Civil Procedure thereby directing the defendant No.1 to hand over the keys of the terrace and the garage door to the plaintiff.

For all the reasons as aforesaid, this Court holds that the learned trial judge was right in directing the

defendant No.1 to hand over the key of the terrace door and the garage door.

The learned advocate appearing for the plaintiff/opposite party submits that till date the keys of the padlock of the terrace door and the garage door has not been handed over.

Since the petitioner has challenged the said order, the time to comply with the order dated September 24, 2024 insofar as direction upon the defendant No.1 to hand over the keys of the terrace door and the garage door is concerned is extended by a week from the date of receipt of this order.

The impugned order stands modified only to the extent as indicated hereinbefore.

With the above observations and directions CO 3683 of 2024 stands disposed of.

In Re:-C.O. 1899 of 2025

This application under Section 227 of the Constitution of India is at the instance of the defendant challenging the order dated March 28, 2025 passed by the learned Civil Judge (Sr. Div.), 3rd Court Sadar, District-Paschim Medinipur in Title Suit No.271 of 2024.

By the order impugned the petition filed by the defendant/petitioner herein praying for time on the ground of pendency of the civil revision application stood rejected.

Since this Court by an order dated June 18, 2025 has disposed of CO 3683 of 2024 nothing remains to be decided in this application.

With the above observation CO 1899 of 2025 stands disposed of.

After this order was passed, the learned advocate appearing for the petitioner prays for stay of operation of this order. Such prayer is considered and rejected by this Court.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)