

02.05.2025
Item No.22, DL
Court No.17
AJ.

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

C.O. 2436 of 2024

**Birendranath Paul alias
Barendra Krishna Paul & Anr.**

-Vs-

Sri Subir Roy Chowdhury & Ors.

Mr. Saptangshu Basu, Ld. Sr. Adv.,
Mr. Debasish Chattopadhyay,
Mr. Tirthankar Basu.
....for the petitioners.

Mr. Biswaroop Bhattacharyya,
Mr. Rakheswar Dey Saarkar.
...for the opposite parties.

The defendants in a suit for declaration of title are the petitioners of the instant revisional application under Article 227 of the Constitution of India which is directed against the judgment and order dated June 28, 2024 passed by the 2nd Court of the learned Additional District Judge, Sealdah, District: 24-Parganas (South) in Miscellaneous Appeal No.11 of 2024 thereby reversing the order dated February 05, 2024 passed by the 1st Court of the learned Civil Judge (Junior Division), Sealdah in Title Suit No. 50 of 2024.

The plaintiffs, the opposite parties herein, in the said suit had filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The learned Trial Judge, by the order dated February 05, 2024, had refused to pass an ad-interim order of injunction on the said application, aggrieved thereby, the plaintiffs have preferred the connected miscellaneous appeal.

The Appeal Court below, by the order impugned has allowed the said prayer of the plaintiffs by

directing the parties to maintain *status quo* in respect of nature, character and possession of the suit property as on the date of the said order till the disposal of the application for temporary injunction.

Mr. Basu, learned senior Advocate for the petitioners submits that in the appeal, the petitioners have filed several documents to demonstrate that the suit property is comprised in thika tenancy. The Appeal Court below should have considered those documents to hold that in view of such nature of the suit property, the suit is barred by virtue of Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 and in aid of such a suit, no ad-interim order of injunction can be passed.

He further submits that the plaintiffs have approached the jurisdictional Tribunal very recently for a declaration that the recording of the suit property as 'thika' in the relevant records, is erroneous, the said step, more definitely, establishes the claim of the defendants that the suit property is comprised in thika tenancy.

Mr. Biswaroop Bhattacharyya, learned Advocate for the plaintiffs submits that the defendants are putting up construction over the suit property, if they are allowed to do so, the reliefs of the plaintiffs in the suit would be frustrated.

Heard learned Advocates for the parties, perused the materials-on-record.

The defendants in the Appeal Court below, have filed several documents in support of their claim

that the suit property is comprised in thika tenancy, without going into the veracity of those documents, *prima facie* it can be safely concluded that at present, the suit property has been recorded as a 'thika' property as the plaintiffs have approached the jurisdictional Tribunal by filing an application being O.A. 852 of 2025 for a declaration that the recording of the suit property as such, is erroneous. In view of such character of the suit property as it stands today, bar to the jurisdiction of the civil court under Section 21 of the said Act of 2001 to determine the issue involved in the said suit, comes into operation, therefore in aid of such suit, the grant of an ad-interim order of injunction is not justified, as such the order impugned is set aside.

It is however made clear that this order will not prevent the plaintiffs to approach the Tribunal to have an appropriate order of injunction in the pending application, if such approach is made, the Tribunal is requested to decide the same expeditiously in accordance with law.

C.O. 2436 of 2024 is disposed of with the above terms without any order as to costs.

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

(Biswajit Basu, J.)