

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

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**C.O. 2799 of 2025
Lakshmi Gayen & Ors.
Vs.
Rina Rani Jodder Raptan**

For the Petitioner : Mr. Tarak Nath Halder

..... advocate

For the Opposite Party : Mr. Abhijit Paul
Mr. Prithwiraj Biswas
Ms. Indrani Das

...advocates

Heard on : 05.08.2025 and 13.08.2025

Judgment on : 21.08.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against the order dated June 18, 2025 passed by the learned Additional District Judge, Fast Track Court, 3rd Court at Basirhat in Misc. Appeal No. 22 of 2024 reversing the order dated August 29, 2024 passed by the learned Civil Judge (Junior Division) 2nd Court at Basirhat in Title Suit No. 161 of 2023.

2. Petitioner filed a suit for permanent injunction being Title Suit No. 161 of 2023. In such suit, petitioner filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure (for short “the Code”) praying for temporary injunction. The learned Trial Judge, by an order dated 29.08.2024, allowed the prayer for temporary injunction. Being aggrieved by such order, the opposite party preferred a Misc. Appeal being no. 22 of 2024 and the learned Judge of the Appellate Court, by an order dated June 18, 2025 allowed the Miscellaneous Appeal thereby setting aside the order passed by the learned Trial Judge.
3. The case made out by the petitioner in the plaint and the injunction application is that the suit plots being LR Plot Nos. 890, 898 and 901 originally belonged to Shibani Joddar who inducted the predecessor of the petitioner namely Tapan Gayen as bargadar in the suit property. Tapan Gayen had been possessing the suit property as bargadar and delivering the share of produce of the suit land to the landlord. The name of Tapan Gayen has been recorded in the L.R. Record of Rights as “Bargadar”. Tapan Gayen died leaving behind him surviving the petitioners as his heirs who inherited the “Barga” right in the suit land and have been possessing the same. Shibani Joddar died leaving behind some legal heirs who have shifted to Bangladesh for which the petitioners could not deliver the share of produce to the landowners. The opposite party is a stranger to the suit property and is disturbing, interfering with the possession of the petitioners and threatening to dispossess the petitioners and for such reason the petitioners were compelled to file the instant suit.
4. The opposite party contended the application for injunction by filing a written objection denying the material allegations contained in the said application. The case made out by the opposite party is that Bipin Behari Gayen was the original owner of the suit land and upon his death his son Binoy Gayen and four daughters namely Charubala Gayen, Kumodinin Mondal, Tukhuri Mondal and Shibani Joddar became the joint owners. Binoy died leaving behind his son Tapan Gayen. Tapan Gayen is the nephew (brother’s son) of Shibani Joddar and, therefore, he is not entitled to

cultivate the suit property as “Bargadar”. Tapan died leaving behind the petitioners as his heirs and heiresses. It is the further case of the opposite party that the petitioners and the opposite party are co-sharers.

5. The learned trial judge by an order dated August 29, 2024 restrained the defendant/opposite party from dispossessing the plaintiffs/petitioners from the suit property till the disposal of the suit. On a miscellaneous appeal being preferred, the learned judge of the appellate court, by the impugned judgment and order, allowed the appeal thereby setting aside the order passed by the learned trial judge.
6. Mr. Halder, learned advocate for the petitioner submitted that the petitioners have inherited the “Barga” right from their predecessor. He contended that the petitioner no. 2 applied for recording his name as a bargadar upon the death of his father namely Tapan Gayen. He contended that since the petitioners are in possession of the suit land, they cannot be dispossessed without due process of law. He further submitted that the opposite party is a stranger to the suit property and she is not an heir of Shibani Joddar.
7. The learned advocate appearing for the opposite party disputed the submissions made by Mr. Halder. He contended that Tapan Gayen is the brother’s son of Shibani Joddar and, therefore, he cannot be said to be a Bargadar. He further submitted that a dispute arises in the instant suit as to whether the petitioner is a “Bargadar” in respect of the suit land under the opposite party and, therefore, such a dispute cannot be decided by the Civil Court in view of Section 21(3) of the West Bengal Land Reforms Act, 1955 (for short “WBLR Act”). He concluded by submitting that the learned judge of the appellate court was right in setting aside the order of injunction.
8. In reply, Mr. Halder placed reliance upon the decisions in the case of ***Haradhan Chongdar vs. Jitendranath Hambir*** reported at **(1980) 1 CLJ 75** and ***Netai Chandra Das vs. Jhontu Panja*** reported at **(2016) 4 CHN (Cal) 401** in support of his contention that the Civil Court has the

jurisdiction to consider an application for injunction in a suit where a dispute as to the status of a person as the bargadar arises.

9. Heard the learned advocate for the parties and perused the materials placed.
10. Before entering into the facts, this Court shall first decide whether the Civil Court lacks jurisdiction to pass an order of injunction merely because a disputed question as to the status of a party as a bargadar has arisen in a suit. Such issue is no longer res integra.
11. The Hon'ble Division Bench in **Haradhan Chongdar** (supra), held that the bar of jurisdiction imposed under Section 21(3) of the WBLR Act is not an absolute bar and it only bars the jurisdiction of the Court to decide the question whether a person is or is not a bargadar if such a question is raised in the suit. In all other respects the Court retains jurisdiction over the suit. It was further held that Sections 21 and 18 read together do not indicate either expressly or by implication that the Court would have no jurisdiction to pass an order of temporary injunction if a case in that behalf is made out.
12. In **Netai Chnadra Das** (supra), the co-ordinate bench reiterated the proposition of law laid down in **Haradhan Chongdar** (supra) that the Court would have jurisdiction to pass an order of temporary injunction.
13. By applying the proposition of law laid down in the aforesaid reported decisions, this Court holds that the trial court had the jurisdiction to entertain and decide an application for injunction even though a dispute as to the status of the plaintiff/petitioner as a "Bargadar" has been raised in the suit.
14. Turning back to the facts of the case on hand, this Court finds that the opposite party claims that the petitioners and the opposite party are co-sharers of the suit land. Possession of the petitioners in the suit lands is not disputed by the opposite party. It has also been admitted by the opposite party that after the marriage of Shibani Joddar, Tapan Gayen i.e., the predecessor of the petitioners was cultivating the suit lands on behalf of Shibani.

15. That apart, the name of Tapan Gayen has been recorded in the L.R. Record of Rights under L.R. Khatian No. 671 as “Bargadar” in respect of L.R. Plot Nos. 890, 898 and 901 i.e., the suit plots.
16. The petitioners are the legal heirs of Tapan Gayen (since deceased) and the “Barga” right is heritable.
17. Though the opposite party has disputed the status of the petitioner as “Bargadar” but the petitioners have made out a prima facie case as to the existence of the right to possess the suit property. The name of the predecessor of the petitioners have been recorded in the L.R. Record of right. Record of rights is a document of possession. Possession of the petitioners in the suit lands has also been not been disputed by the opposite party as observed hereinbefore. Therefore, the balance of convenience and inconvenience lies in favour of the petitioners and they would suffer irreparable loss and injury unless an order of injunction is passed in their favour.
18. It is well settled that a person in possession should not be dispossessed from an immovable property without due process of law.
19. The learned trial judge considered the materials on record, and was right in passing an order of injunction restraining the opposite party from dispossessing the petitioner till the disposal of the suit.
20. The learned Judge of the appellate court, however, failed to appreciate that grant of an injunction does not mean a final adjudication of the dispute nor is the plaintiff/petitioner required to establish his title before he can seek an order of injunction in his favour. The learned judge of the appellate court proceeded to consider whether the petitioner’s possession is that of a bargadar or not. The learned Judge of the appellate court failed to consider that the present possession of the petitioner should be protected till the dispute between the parties is finally decided.
21. In view of the aforesaid discussion, this Court is inclined to set aside the judgment and order passed by the learned Judge of the appellate court in the Miscellaneous Appeal.

22. Accordingly, the judgment and order dated June 18, 2025 passed by the learned Additional District Judge, Fast Track Court no. 3 at Basirhat in Misc. Appeal No. 22 of 2024 is set aside. The order dated August 29, 2024 passed by the learned Civil Judge (Junior Division), 2nd Court at Basirhat, in Title Suit No. 161 of 2023 is affirmed. C.O. 2799 of 2025 stands allowed. There shall be no order as to costs. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)