

Court No. 6
(265719)

11.08.2025
(AD 26)
(S. Banerjee)

CO 2830 of 2025

Mahfuza Khatun
Vs.
Sk. Asif Iqbal & Ors.

Mr. Gopal Ghosh, Sr. Advocate
Mr. Arif Ali
Mr. Sarban Bhattacharjee

...for the petitioner

Mr. Pratip Mukherjee
Mr. Munjel Alam
Mr. Atarul Hoque

...for the opposite party nos. 1 and 2

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against a judgment and order dated July 25, 2025 passed by the learned District Judge (in-Charge), Alipore, South 24 Parganas in Title Appeal No. 102 of 2025. By the order impugned, the prayer for ad interim injunction was rejected and notice was directed to be issued upon the respondent nos. 3 to 7 asking them to show cause as to why prayer for temporary injunction shall not be allowed.

Mr. Ghosh, learned Senior Advocate, appearing for the petitioner submits that the petitioner filed a suit for declaration of title in respect of B schedule property and also for a declaration that the A schedule property is the common passage and the

petitioner has unfettered right of user of the common passage and no one has a right to encroach upon such common passage and to make a construction therein. He further submits that the learned trial judge passed an ad interim order of injunction which was in subsistence during the pendency of the suit. After dismissal of the suit, the petitioner preferred an appeal and also prayed for an order of injunction. The learned judge of the appellate court, however, refused to pass an ad interim order of injunction in favour of the petitioner.

Learned advocate appearing for the opposite parties submits that the learned trial judge while deciding the issue number 3 in the suit has specifically recorded that the transfer in favour of the petitioner herein was made in violation of the restrictions imposed in the deed of settlement that no alienation can be made within a period of 10 years from the date of such deed of settlement without the consent of the State. He, therefore, submits that the petitioner has failed to make out a prima facie case for an order of injunction and the learned judge of the appellate court was right in refusing to pass an ad interim order of injunction. He further submits that the petitioner in the plaint has stated that the defendant is in possession of the suit property and in support of such contention he placed reliance upon

various paragraphs of the plaint, more particularly, paragraph nos. 16 and 17 thereof.

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

After going through the averments made in the plaint this court finds that it is specific case of the petitioner that he became the owner of the suit property by virtue of a deed of conveyance and thereafter mutated his name in the records of the Kolkata Municipal Corporation and is paying taxes in respect of the suit property. In paragraph nos. 16 and 17 of the plaint, the petitioner has alleged that the defendant no. 3 is trying to make construction over the common passage and/or in a portion of the suit property which belongs to the petitioner including the common passage measuring about 600 square feet and the garage measuring about 100 square foot. At this stage it would be relevant to point out that an application under Order 39 Rule 1 and 2 of the Civil Procedure Code being filed by the petitioner in Title Suit No. 15158 of 2013, the learned trial judge passed an ad interim order of injunction directing both the parties to the suit to maintain status quo in respect of the nature, character and possession of the A and B schedule property for a limited period. The ad interim order of injunction was,

however, made absolute by an order dated January 20, 2015. It is not in dispute that the order of status quo was in subsistence till the suit was dismissed by a judgment and decree dated May 20, 2025. The petitioner herein has preferred an appeal challenging the dismissal of the said suit. After hearing the learned advocates for the respective parties this court finds that several legal and factual issues have been raised in the said title appeal. The learned judge of the appellate court has also directed issuance of notice upon the opposite party nos. 3 to 7 asking them to show cause as to why the prayer for temporary injunction shall not be allowed.

The property involved in the appeal should be maintained in its present state.

That apart an order of status quo was in subsistence on and from June 27, 2013 till the dismissal of the suit. This court is inclined to pass an ad interim order of injunction directing the parties to maintain status quo in respect of the nature, character and possession of the A and B schedule property till the disposal of the injunction application pending before the learned judge of the appellate court.

The learned District Judge is requested to dispose of the injunction application as expeditiously

as possible without granting any unnecessary adjournment to either of the parties.

It is, however, made clear that the learned judge of the appellate court while deciding the application for temporary injunction shall be free to decide such application without being influenced by the observations made by this court in this order and that this Court has passed an interim order.

Accordingly, CO 2830 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)