

27.08.2025
Item No.32.
Court No.06.
S. De
265719

C.O. 2838 of 2025

Gouranga Chandra Paul.
Vs.
Palash Paul & Ors.

Mr. Sukanta Chakraborty,
Mr. Anindya Halder, ...for the petitioner.

Mr. Somnath Roy Chowdhury,
Ms. Arpita Chowdhury, ...for the opposite parties.

This application under Section 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated March 26, 2025 passed by the learned Additional District Judge, 1st Court, Howrah in Misc. Appeal No. 153 of 2023 affirming the order dated August 23, 2023 passed by the learned Civil Judge, Junior Division, 3rd Court, Howrah in Title Suit No. 16592 of 2014.

The petitioner filed a suit for declaration that he is the lawful occupier of the suit property and for permanent injunction restraining the opposite parties and their men and agents from disturbing the peaceful possession of the petitioner in respect of the suit property. After filing of the said suit, the petitioner filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure. The learned Trial Judge by an order dated August 20, 2015 rejected the application for temporary injunction.

Being aggrieved, the petitioner preferred misc. appeal no.165 of 2015 and the learned Additional District Judge, 1st Court, Howrah, by an order dated February 8, 2018, passed an order of status quo as regards nature, character and possession of the suit property as on the date of passing of the said order till the disposal of the said suit.

Thereafter, the petitioner filed an application under Order 39 Rule 7 of the Code of Civil Procedure for appointment of an advocate Commissioner for inspecting the suit property on the points mentioned in the schedule of the said application. The petitioner also filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for an order restraining the defendants/opposite parties from creating any obstruction at the time of repairing of the roof of the suit property.

Learned Trial Judge by an order dated August 23, 2023 rejected both the applications and being aggrieved by such orders the petitioner filed an appeal being Misc. Appeal No. 153 of 2023. The learned Additional District Judge, 1st Court at Howrah, by the order impugned, rejected the prayer for injunction with regard to repairing of the roof of the suit property.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that the learned Trial Judge as well as the learned Judge of the appellate Court

rejected the prayer for injunction on the ground that the petitioner failed to prove their legal title in respect of the property in question. He further submits that it is not in dispute that the petitioner is in possession of the property in question. He further submits that the application was filed praying for vacating and/or modification of the order of injunction.

The learned advocate appearing for the opposite party submits that the application for injunction was filed merely on the apprehension that the opposite parties will obstruct the petitioner while carrying out the repairing work. He further submits that unless the clear picture with regard to the suit property and the roof of the same is brought before the learned Trial Judge, the petitioner is not entitled to get any order for repairing the suit property.

Heard the learned advocates for the parties.
Perused the materials placed.

It is not in dispute that the petitioner is in possession of the suit property. With regard to the status of the petitioner in respect of the suit property, the same has to be adjudicated at the time of trial. Alleging that the roof of the suit property requires necessary repairs an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure was filed. In aid of such application, the petitioner filed an application under Order 39 Rule 7 of the Code of Civil Procedure.

A prayer for local inspection was rejected by the learned Trial Judge by the order dated August 23, 2023 upon holding that the petitioner was allowed to possess the suit property by the predecessor of the opposite parties and the petitioner has not claimed any legal title to the suit property. The petitioner challenged the said order in the Misc. Appeal No. 153 of 2023 and the learned Judge of the appellate Court was right in holding that the order rejecting the prayer for local inspection cannot be challenged in a Misc. Appeal filed under the provisions of Order 43 Rule 1 of the Code of Civil Procedure. The petitioner has not challenged the said order dated August 23, 2023 rejecting the application for local inspection by filing any application under Article 227 of the Constitution of India. Thus, the order rejecting the prayer for local inspection attained finality. The said application was filed in aid of the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

After going through the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, this Court finds that the petitioner has not specified the extent of the damage of the roof in such application. To the mind of this Court, the application under Order 39 Rule 7 of the Code of Civil Procedure was filed in order to collect the evidence, which is not permissible. Second proviso to Order 39 Rule 4 of the Code of Civil

Procedure states that, where an order of injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.

According to Mr. Chakraborty the application was filed under the provision of Order 39 Rule 4 of the Code of Civil Procedure for modification of the order of injunction. The said application does not contain any statement that is required in order to invoke the provisions laid down under the second proviso to Order 39 Rule 4 of the Code of Civil Procedure. No material has been placed either before the learned Judge of the appellate Court or before this Court at the time of hearing of the civil revision application to show that the subsequent change of circumstances necessitates the discharge, variation or setting aside an order of injunction passed by the learned Judge of the appellate Court.

In view thereof, this Court is not inclined to interfere with the ultimate conclusion arrived at by the learned Judge of the appellate Court.

Accordingly C.O. 2838 of 2025 stands dismissed.

There will be no order as to costs.

(Hiranmay Bhattacharyya, J.)