

Sl.15
04.09.2025
Court No.6
BP

C.O. 3093 of 2025

Nijam Sk. & Ors.
-versus-
Yanus Mirja & Ors.

Mr. Prasanta Bishal
Md. Jannat Ul Firdous
... for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order dated 8th April, 2025 passed by the learned Civil Judge (Senior Division), Kandi, Murshidabad in Misc. Appeal No. 6 of 2023.

By the judgement and order impugned, the miscellaneous appeal was dismissed thereby affirming the order being no. 8 dated 16th June, 2023 passed by the learned Civil Judge (Junior Division), 2nd Court at Kandi, Murshidabad in Title Suit No. 65 of 2023.

The learned advocate appearing for the petitioners submits that the petitioners are in possession of the suit property and the suit property has been duly recorded in their name in the record of rights. He submits that the learned trial judge as well as the learned judge of the appellate court without considering the record of rights passed an order of injunction in favour of the plaintiffs/opposite parties herein.

The opposite parties herein filed a Title Suit No. 65 of 2023 before the learned Civil Judge (Junior Division), 2nd Court at Kandi, Murshidabad. The case as

made out in the plaint is that originally the suit property belonged to Abdul Bari and Islam Sk. in equal share. Thereafter Abdul Bari transferred the same in favour of Kubera Bibi vide registered heba-bil-ewaj being no. 1461 of 1985. Kubera Bibi further transferred the same in favour of Abul Kayem Mirja and Hasinur Bibi vide registered deed being no. 3541 of 1998. Subsequently Abul Kayem Mirja transferred his share in favour of Hasinur Bibi vide registered sale deed being no. 8772 of 2022. Islam Sk. died leaving behind his wife Hamidon Bibi and son Mujaffar Sk.

After the death of Hamidon Bibi, Mujaffar Sk became the owner of entire share of Islam Sk. The said Mujaffar Sk by way of deed of exchange being no. 4737 of 1977 transferred the same in favour of Younus Mirja, Abul Kayem Mirja and Tayeb Mirja. Thus, the share of Islam Sk devolved in favour of Younus Mirja and Abul Kayem Mirja and the share of Abdul Bari devolved in favour of Hasinur Bibi. The plaintiff further alleged that the defendant no. 1 on the basis of one power of attorney of the legal heirs of Mujaffar Sk sold 50% of the property in favour of defendant nos. 2 to 7. It is the specific case of the plaintiffs that when Mujaffar Sk has transferred his share in favour of Younus Mirja, Abul Kayem Mirja and Tayeb Mirja by a deed of exchange being no. 4737 of 1977 the legal heirs of Mujaffar Sk do not have any transferable right in the suit property.

It is the case made out by the petitioners in the written objection against the temporary injunction that the suit property originally belonged to Kedar Bayen and Lalit Bayen. By way of an exchange they have transferred the property in 1947 in favour of Islam Sk. Upon the death of Islam Sk. the suit property devolved upon his son namely Mujjafar Sk. Mujjafar Sk died leaving behind one son namely Laltu Sk and daughter Chaina Bibi. Laltu Sk and Chaina Bibi executed one power of attorney in favour of the defendant no.1 namely Nijam Sk. On the basis of such power of attorney Nijam Sk transferred the suit property in favour of the defendant nos. 3 and 7.

After going through the case made out by the respective parties this Court finds that the defendants are claiming title from the legal heirs of Mujaffar Sk. On the other hand it is the case of the plaintiff that the said Mujaffar Sk during his lifetime, by a deed of exchange being no. 4737 of 1977, transferred his share in the property in favour of Younus Mirja, Abul Kayem Mirja and Tayeb Mirja and therefore, the heirs of Mujaffar Sk did not have any transferable interest in the suit property.

Record reveals that by virtue of a registered deed of exchange being no. 4737 of 1977 Mujaffar Sk during his life time transferred his right, title and interest in

respect of the suit property in favour of Younus Mirja, Abul Kayem Mirja and Tayeb Mirja.

When Mujaffar Sk. has transferred his right, title and interest in respect of the suit property by virtue of the registered deed of exchange, his heirs would not have any transferable interest in the suit property.

After going through the materials on record, this Court finds that the opposite parties have made out a strong prima facie case to go for trial. The balance of convenience and inconvenience is in favour of the opposite parties herein and the opposite parties would suffer irreparable loss and injury if an order of injunction is not passed in their favour.

It appears from the record that the defendants/petitioners did not contest the injunction application before the learned trial judge. However, the learned judge of the appellate court after considering the materials on record was right in observing that the plaintiffs/opposite parties have made out a prima facie case to go for trial, the balance of convenience and inconvenience is in favour of the plaintiffs/opposite parties and the plaintiffs/opposite parties would suffer irreparable loss and injury.

Though the learned advocate appearing for the petitioners submits that the name of the petitioners have been duly recorded in the record of rights but the

record of rights was neither placed before the learned trial judge nor before the appellate court.

For all the reasons as aforesaid, this Court is not inclined to interfere with the orders impugned.

Accordingly, C.O. 3093 of 2025 stands disposed of.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)