

Sl.41
28.08.2025
Court No.6
BP

C.O. 3137 of 2025

Sri Biswajit Dey
-versus-
Minor Ujan Dey & Ors.

Mr. Souvik Das
... for the petitioner

Mr. Nilanjan Bhattacharjee, Sr. Advocate
Mr. Abhilash Chatterjee
Mr. Akash Adak
..for the opposite party no.2

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against the judgement and order dated April 22, 2025 passed by the learned District Judge at Howrah in Misc. Appeal No. 32 of 2023.

By the impugned judgement and order the miscellaneous appeal arising out of an order refusing to pass an ad interim order of injunction by the learned trial judge stood dismissed.

The learned advocate appearing for the petitioner submits that the opposite party no.3 who is a co-sharer in respect of the suit property transferred a demarcated portion of the suit property in favour of the opposite party nos. 1 and 2. He submits that a co-sharer cannot transfer demarcated portion of the property. He further submits that taking advantage of the execution of the deed of gift

by the opposite party no.3 in favour of the opposite party nos. 1 and 2, the opposite party nos. 1 and 2 are trying to transfer the demarcated portion of the property in favour of third parties.

Mr. Bhattacharjee, learned senior advocate appearing for the opposite party no.2 submits that the petitioner has suppressed the fact that the other sisters as well as the mother of the petitioner have transferred their share in favour of the petitioner. He submits that the learned judge of the appellate court after taking note of the suppression of material facts dismissed the said miscellaneous appeal.

In reply, the learned advocate appearing for the petitioner submits that the sisters and mother of the petitioner did not transfer demarcated portion of the suit property but only their undivided share in the suit property has been transferred in favour of the petitioner.

After going through the plaint this Court finds that the petitioner has suppressed the fact of acquisition of the share of his sisters and the mother. Even if the case of the petitioner is accepted that the demarcated portions of the suit property could not have been transferred by the opposite party no.3 in favour of the opposite party nos. 1 and 2, this Court finds that such transfer has not been challenged by the petitioner in the plaint.

The suit property has not been partitioned and the suit is not for partition. There is also no prayer for

declaration that the gift deed is void. A co-sharer of a property also cannot transfer specific demarcated portion of the suit property.

For such reason, this Court is not inclined to pass an interim order at this stage.

On a query of the Court Mr. Bhattacharjee, learned senior advocate for the opposite party no.2 submits that no written objection to the injunction application has yet been filed.

As prayed for by Mr. Bhattacharjee, learned advocate for the opposite party no.2, the opposite parties shall be at liberty to file written objection to the injunction application within a period of two weeks from date.

The learned trial judge is requested to dispose of the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure after giving an opportunity of hearing to the respective parties as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

It is, however, made clear that the observations made hereinbefore are only for the purpose of disposal of this civil revisional application which arises out of refusal to pass an ad interim order of injunction.

The learned trial judge shall be free to decide the application under Order 39 Rule 1 and 2 without being influenced by the aforesaid observations.

With the above observations and directions, C.O. 3137 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.)