

Sl.32
18.09.2025
Court No.6
BP

C.O. 3489 of 2025

Sri Pradip Mukherjee
-versus-
Sri Sanjib Sarkar & Ors.

Ms. Sucharita Biswas
Mr. Debapriya Gupta
... for the petitioner

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 July 31, 2025 passed by the learned Civil Judge (Senior Division), Suri, Birbhum in Misc. Appeal 29 of 2024.

By the judgement and order impugned the miscellaneous appeal was dismissed thereby affirming the order dated July 24, 2024 passed by the learned trial judge.

The petitioner filed a suit for permanent injunction restraining the defendants and their men and agents from selling out the suit schedule property to any other person till the disposal of the suit and for mandatory injunction directing the defendants/opposite parties herein to execute a registered deed without any consideration before the sub-registrar, Suri in respect of the property mentioned in the schedule of the plaint.

After going through the averments made in the plaint this Court finds that the petitioner has sought for enforcement of the registered agreement which was executed on July 11, 2017.

The petitioner filed an application for temporary injunction and the learned trial judge by an order dated July 24, 2024 dismissed the application for temporary injunction. Being aggrieved the petitioner preferred a miscellaneous appeal which was dismissed by the judgement and order impugned.

The learned advocate appearing for the petitioner submits that the opposite parties did not deny the right of the petitioner to get possession of the schedule property. She submits that in view thereof the petitioner filed a suit praying for mandatory injunction. She further submits that the petitioner did not seek specific performance of the agreement as the opposite parties did not deny the right of the petitioner to get possession of the schedule property.

After going through the averments made in the plaint this Court finds that the cause of action for filing the instant suit is that the petitioner is entitled to get 460 sq.ft. covered area flat with specific description as mentioned in the agreement dated July 11, 2017 and though the petitioner requested the opposite parties to execute a deed without consideration the defendants did not accede to the request of the petitioner. Thus from the case made out in the plaint it is evident that there was denial on the part of the opposite parties to execute the deed in favour of the petitioner. The cause of action for filing the suit is to enforce the agreement dated July

11, 2017. Thus the learned trial judge as well as the learned judge of the appellate court was right in holding that the petitioner ought to have prayed for specific performance of contract.

At this stage the learned advocate appearing for the petitioner submits that liberty be given to the petitioner to pray for amendment of the plaint.

If the petitioner is entitled to seek an amendment of plaint he is free to do so and for such purpose liberty is not necessary.

The learned trial judge as well as the appellate court was right in refusing the prayer for temporary injunction by assigning cogent reasons in support of the ultimate conclusion.

The learned advocate appearing for the petitioner submits that the defendants have already admitted the claim of the plaintiff in the written statement.

If that be so it will be open to the petitioner to take appropriate steps in accordance with law.

For such reason, this Court is not inclined to interfere with the order impugned.

With the above observations, C.O. 3489 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.)