

08.12.2025
Ct. No. 06
Item No.12
Cp

C.O. No. 3946 of 2025

Santanu Majumder
Vs.
Bani Roy Choudhury & Anr.

Mr. S. Nayak
Mr. Shibashis Nandy

.....for the petitioner.

Mr. Satyam Mukherjee
Mr. Purnendu Shekhar Ghosh
Mr. Saibal Rakshit

.....for the opposite party no.1.

The supplementary affidavit filed today is taken on record.

The petitioner is aggrieved by an order dated September 17, 2025, passed by the learned Civil Judge (Senior Division), 2nd Court, Barasat in Title Suit No.584 of 2024.

By the order impugned, the learned court rejected an application under Section 151 of the Code of Civil Procedure. The petitioner is the defendant No. 2 in the suit for partition. The petitioner filed an application seeking orders upon the defendant no. 1 in the suit, to restore possession to the petitioner upon recording that the ad interim order of injunction had been violated by the defendant no. 1.

The learned court rejected the said application on the following grounds:-

- a) The ad interim order of injunction recorded that the defendant no. 1 had dispossessed the defendant no. 2 from the suit premises.
- b) That the plaintiff and the defendant no. 1 were in possession of the property.
- c) That status quo was directed to be maintained with regard to nature, character and possession of the property by the plaintiff and the defendant No. 1.

Mr. Nayak, learned advocate appearing for the petitioner, submits that the order suffers from irregularity, inasmuch as, the learned court while passing the ad interim order of injunction could not have come to a conclusion that the defendant no. 1 had dispossessed the defendant no. 2 from the property in question.

Although the petitioner had gifted his share in the property to the plaintiff, the petitioner was in possession of a part of the property. In the teeth of the order of status quo, the defendant no. 1 broke open the lock, forcibly entered into the portion of the property enjoyed by the petitioner, and dispossessed the petitioner.

Mr. Mukherjee, learned advocate for the defendant no. 1/caveator, submits that the

defendant no. 1 has always been in possession of the property by way of an amicable arrangement between the parties. Moreover, the learned trial judge had come to a finding that the defendant no. 2/petitioner had been dispossessed from the property.

Mr. Nayak denies the contentions of the defendant no. 1.

I have considered the order impugned and I find that the learned court rightly rejected the application filed by the petitioner. The petitioner's allegation was that, in violation of the ad interim order directing the plaintiff and the defendant no. 1 to maintain status quo with regard to the nature, character and possession of the suit property, the defendant no. 1 broke open the lock of the portion in the ground floor being occupied by the petitioner and forcefully took possession. The allegation of dispossession is not supported by any document. Rather, the learned court while granting the ad interim order in the nature of status quo had recorded that the defendant no. 1 had already dispossessed the petitioner from the ground floor. Hence, the court did not find any violation.

The status of the property on the date the ad interim order as per the finding of the court, was

that, the plaintiff and the defendant no. 1 were in possession.

Under such circumstances, the order impugned does not suffer from any perversity.

Mr. Nayak submits that the finding of the learned judge in the ad interim order was incorrect. Records would reveal that the petitioner was in possession of the property when the order of status quo was granted.

The remedy of the petitioner would be to either prefer an appeal or file an application for variation or vacation of the ad interim order.

Under such circumstances, the application is disposed of. The order impugned is not interfered with.

This order will not preclude the petitioner from taking appropriate steps in accordance with law.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)