

JPD-04
Ct No.01
25.07.2025
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 101 of 2025

Sri Anand Kumar Agarwala and others
Vs.
Smt. Manju Devi Agarwal @ Manju Agarwal and others

Mr. Sandip Mandal,
Mr. Amit Saha

.... for the petitioners

Mr. Shashi P. Kanodia

.... for the opposite party no.4

1. Affidavit-of-service filed today be kept on record.
2. Since the caveator/opposite party no.4 is the primary contesting party, service of notice of the revision on the other opposite parties is dispensed with.
3. Learned counsel for the revisionist petitioners submits that the revisionist petitioners have filed a suit for declaration of title challenging certain sale deeds allegedly executed in favour of the defendants and also sought recovery of possession and permanent injunction and mandatory injunction in respect of the suit property.
4. Initially, an ad interim order of injunction was granted in the suit. Subsequently, however, the same was sought to be vacated by the

defendant/opposite party no.4 by filing an application under Order XXXIX Rule 4 of the Code of Civil Procedure on the ground that the ad interim order was obtained by suppression of the material fact that one of the plaintiffs, plaintiff no. 3 to be precise, had revoked the general power of attorney granted to the person who filed the suit, which vitiated the ad interim order and the maintainability of the suit. The learned Trial Judge, by a subsequent order dated March 28, 2023, accordingly vacated the ad interim order and simultaneously disposed of the temporary injunction as well by rejecting the same.

5. Subsequently, the present plaintiffs/petitioners furnished a further general power of attorney, executed by the self-same plaintiff no. 3, where it was mentioned categorically that although he had previously revoked the general power of attorney on the basis of which the suit had been filed, he had not informed the said event of revocation in any manner to his younger brother. It was reiterated therein that a general power of attorney was being given afresh to the person who filed the suit, for conducting the suit on behalf of the plaintiff no.3 as well. On the premise of the same, pleading change of circumstances, an application, captioned to be one under Section 151 of the Code of Civil

Procedure, was filed by the plaintiffs/petitioners, thereby seeking a similar injunction as in the earlier temporary injunction application. The same was rejected by the learned Trial Judge, by the impugned order against which the present revision has been preferred.

6. It is contended by the petitioners that the learned Trial Judge failed to take into consideration that the previous vacating of the ad interim injunction was on the sole ground of revocation of power of attorney by one of the plaintiffs, which ground is no longer valid and has been rendered academic in view of the execution of the fresh power of attorney.
7. Learned counsel appearing for the defendant/opposite party no.4, who is the primary contesting opposite party, submits that the learned Trial Judge considered the written objection of the said defendant/opposite party at length and upon passing a reasoned order, had refused to grant injunction.
8. It is submitted that the suit is not maintainable in the sense that the original transfer deed has not been challenged. Moreover, since the trial court recorded in the impugned order the existence of numerous registered sale deeds in favour of the defendants, sufficient ground was furnished by the

learned Trial Judge for rejecting the application for injunction.

9. As such, it is submitted that the defendants would suffer irreparably if injunction is granted.
10. The circumstances of the case are peculiar.
11. At the first instance, the learned Trial Judge had been pleased to grant an ad interim injunction, although at the *ex parte* stage, being *prima facie* satisfied of the case made out in the plaint. Subsequently, however, at the time of dealing with an application under Order XXXIX Rule 4 of the Code of Civil Procedure, the trial court disposed of the temporary injunction application itself, instead of restricting itself to vacate the ad interim order, without considering on merits the respective arguments of the parties, as reflected from the order dated March 28, 2023.
12. Although learned counsel for the opposite party no. 4 argues that the entire arguments of the parties were narrated therein, I find from the said order that although the arguments of the parties had been narrated at length, the reasoning of the learned Trial Judge for vacating the order and dismissing the temporary injunction application was restricted to the ground taken in the application under Order XXXIX Rule 4 and the order dismissing the temporary injunction was

passed only on the ground of suppression of germane facts inasmuch as the plaintiff no. 3 had revoked his general power of attorney in the meantime.

13. Thus, when the subsequent application under Section 151, on the strength of the fresh power of attorney, was filed, it was the incumbent duty of the learned Trial Judge to reconsider its order dated March 28, 2023 and/or to consider the prayer for injunction afresh.
14. Since the earlier order of dismissal of the temporary injunction application dated March 28, 2023 was premised wholly on the alleged suppression due to revocation of the power of attorney, which has now been mitigated in view of the action of the plaintiffs being ratified by plaintiff no. 3 himself by executing a fresh power of attorney, the learned Trial Judge ought to have decided the temporary injunction application afresh, alternatively, to treat the subsequent application under Section 151 of the Code to be a substantial injunction application and adjudicated it on merits.
15. Also, this Court finds from the impugned order that there is no detailed discussion for refusal of the prayer for injunction.

16. The learned Trial Court records in the impugned order that the suit has been filed “challenging numerous registered sale deeds” which carry a presumption of correctness, without going into the details of the arguments of either side on the relevant issues or rendering its own findings on the versions of both the parties.
17. I do not find the arguments of the parties or the materials on record being reflected in the present impugned order at all. It is an admitted position that there are numerous registered sale deeds which, in law, might carry presumption of correctness. However, the present suit has been filed specifically to challenge the correctness of the said deeds by the plaintiffs seeking to rebut the presumption of correctness so raised.
18. The learned Trial Judge, accordingly, had the incumbent duty to address on merits the arguments of both sides and the materials on record before deciding the injunction prayer finally.
19. The other ground cited in the impugned order dated May 23, 2025 to the effect that admittedly the defendants are in possession, cannot have any bearing on the question of a *prima facie* case and balance of convenience inasmuch as the prayer for injunction of the plaintiffs is not in respect of the possession of the property but with regard to the

change of nature and character of the suit property, which, if effected, might denude the suit of any efficacy in the event the nature and character of the property is altered before the final hearing of the suit.

20. Thus, the trial court ought to have tested the case of temporary injunction sought by the plaintiffs on the anvil of the legal yardsticks of *prima facie* case, balance of convenience and inconvenience as well as irreparable injury upon giving adequate consideration to the arguments and materials produced by both the parties. Having not done so, the impugned order is vitiated by jurisdictional error.
21. Accordingly, CO 101 of 2025 is allowed on contest as against the opposite party no. 4 and *ex parte* against the others, thereby setting aside the impugned order, bearing Order No. 24 dated May 23, 2025 passed by the learned Civil Judge (Junior Division), Jalpaiguri in Title Suit No. 490 of 2022, and directing the learned Trial Judge to re-adjudicate the application under Section 151 of the Code of Civil Procedure by treating the same to be the original temporary injunction application filed by the plaintiffs, in the light of the observations made above.

22. It is made clear that while doing so, the learned Trial Judge shall not be prejudiced in any manner by the observations made in the order dated March 28, 2023 and adjudicate the application under Section 151 of the Code of Civil Procedure filed by the plaintiffs/petitioners as a fresh injunction application on its own merits, independently of the observations made in the present order or the order dated March 28, 2023 passed in the suit.
23. While doing so, the learned Trial Judge shall take into consideration the respective arguments of both sides and their pleadings in such application for injunction as well as the written objection thereto. The learned Trial Court shall also advert to all the relevant materials on record while coming to its conclusions.
24. In view of the urgency involved, it is expected that the learned Trial Judge shall proceed to dispose of the application under Section 151 of the Code of Civil Procedure by treating the same to be an application for temporary injunction at the earliest, preferably within six weeks from the date of communication of this order to the learned Trial Judge.
25. Both parties shall maintain status quo with regard to the nature and character of the suit property till disposal of the said application. However, it is

made abundantly clear that the above *ad hoc* order of status quo shall not in any manner prejudice the adjudication of the application for injunction by the learned Trial Judge on its own merits and the observations made in the present order are restricted to the adjudication of the present revisional application and shall not be binding on the learned Trial Judge at any further stage of the suit or connected applications.

26. It is made clear that both the parties will be at liberty to file supplementary affidavits to the application for injunction under Section 151 of the Code of Civil Procedure as well as to the written objection thereto respectively, to furnish further particulars. If so filed, such affidavits shall be filed within one week from date in the trial court.
27. There will be no order as to costs.
28. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)