

S/L 72
18.08.2025
Court. No. 3
Suwayan

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

CO 140 of 2024

**Smt. Radhika Dey
Vs.
Saira Banu & Ors.**

*Mr. Momenur Rahman
Mr. Bikash Singha*

...for the petitioner.

1. The affidavit-of-service as filed today on behalf of the petitioner/defendant no. 6 is taken on record.
2. None appears on behalf of the opposite parties despite service.
3. The subject matter of the instant revisional application is the Order no. 139 dated 12.12.2024 as passed in Title Suit no. 44 of 2008 by the learned Civil Judge, Senior Division, Jalpaiguri whereby and whereunder the said Court though rejected the prayer for compromise, however, permitted the plaintiff and the defendant no. 9 to effect a transfer in respect of the particular portion of the suit property modifying the temporary injunction as passed earlier in the self-same suit.
4. At the time of hearing, Mr. Rahman, learned Advocate appearing on behalf of the petitioner/defendant no. 6 has handed over a photocopy of the certified copy of the order dated 28.07.2025 as passed by a co-ordinate Bench of this Court in CO 13 of 2025 whereby and whereunder the said co-ordinate Bench while disposing CO 13 of 2025 set aside the similar such previous order as passed by the learned Trial Court in

the self-same suit by holding that while disposing a petition under Order XXIII Rule 3 an injunction order cannot be modified in absence of any application under Order XXXIX Rule 4 CPC. It is submitted that while passing the impugned order the self-same Court committed similar such mistake by permitting the plaintiff and the defendant no. 9 to effect transfer in respect of a particular portion of a suit property without noticing that in the alleged compromise petition as filed before the Trial Court all the parties to the said suit have not signed.

5. On careful perusal of the entire materials as placed before this Court it reveals that the petition under Order XXIII Rule 3 CPC was filed on behalf plaintiff and the defendant no. 9.
6. As rightly pointed by Mr. Rahman that in the said petition under Order XXIII Rule 3 CPC the other parties to the said suit were not the signatories. It further appears to this Court the learned Trial Court while passing the impugned order though rejected such application but most surprisingly allowed the plaintiff and the defendant no. 9 to effect intended transfer in respect of a portion of the suit property modifying the earlier order of temporary injunction.
7. It is settled principle of law that in a compromise petition all the parties to a suit are necessary parties. It is also settled principle of law that by filing an application under Order XXIII Rule 3 CPC a temporary injunction cannot be modified unless a case

has been made out for modifying and/or varying the order of injunction except on the grounds as mentioned under Order XXXIX Rule 4 CPC.

8. It thus appears to this Court that while passing the impugned Order no. 139 dated 12.12.2024 a serious miscarriage of justice occurred and accordingly the same cannot be allowed to stand.
9. Consequently, CO 140 of 2025 is hereby allowed.
10. Consequently, the impugned Order no. 139 dated 12.12.2024 as passed by the learned Civil Judge, Senior Division, Jalpaiguri in Title Suit no. 44 of 2008 is hereby set aside.
11. Consequently, the deed of conveyance as has been executed on 18.12.2024 and as has been registered on 19.12.2024 under Book no. I, Volume no. 0701-2024, page nos. 208808 to 208830 being no. 070104870 for the year 2024 is hereby quashed and cancelled.
12. Department is directed to forward a copy of this order to the learned Trial Court forthwith.
13. Department is further directed forward an another copy of this order to the learned Additional District Sub-Registrar, Jalpaiguri for his information and doing the needful.
14. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)