

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

Present:

The Hon'ble Justice Partha Sarathi Sen

CO 202 of 2024

**Nijamuddin
Vs.
Sukuru Md. & Ors.**

For the petitioner : Mr. Shibashish Ghosh
Mr. Kunaljit Bhattacharjee
Mr. Haider Ali
Mr. Satyam Sarkar

For the opposite parties : Mr. Bikramaditya Ghosh
Mr. Subrata Sarkar
Mr. Partha Chaudhury

Heard on : 08.01.2025

Judgment on : 08.01.2025

PARTHA SARATHI SEN, J.:

1. In this revisional application as filed under Article 227 of the Constitution of India the judgment and order dated September 26, 2024 as passed by learned District Judge, Jalpaiguri in Misc. Appeal No. 57 of 2022 is impugned.

2. By the impugned order the First Appellate Court while dismissing the said appeal affirmed the order of status quo as passed by the learned Trial Court in Title Suit No. 483 of 2022.
3. The plaintiff who is the petitioner before this Court felt aggrieved and thus preferred the instant revisional application.
4. For effective adjudication of the instant revisional application the facts leading to filing of the instant revisional application are required to be dealt with in a nutshell and those are as under:
 - (i) By filing Title Suit No. 483 of 2022 the plaintiff has stated that he is the absolute owner of the suit property by way of purchase and he has recorded his name in the record of right in respect of the suit property. It is the further plaintiff case that the defendants having no right, title and interest over the suit property are making an attempt to interfere with the peaceful possession of the plaintiff over the suit property and thus the plaintiff by filing the said suit has prayed for decree for declaration, decree for permanent injunction along with other ancillary reliefs.
 - (ii) In the self-same suit the plaintiff had also filed an application under Order 39 Rules 1 and 2 of read with Section 151 of the Code of Civil Procedure with a prayer for ad interim order of injunction restraining the

defendants from entering into the suit property as well as from alienating the suit property to any third party.

- (iii) By an order dated 29.09.2022 learned Trial Court passed an ad interim order of injunction as prayed for against the defendants.
- (iv) After service of notice the defendants appeared in the said suit and filed an application under Order 39 Rule 4 of the Code of Civil Procedure.
- (v) On 01.12.2022 learned Trial Court took up the application for injunction as filed under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure by the plaintiff and the application under Order 39 Rule 4 of the Code of Civil Procedure as filed by the defendants. By a common order dated 01.12.2022 learned Trial Court disposed of both the aforementioned two applications and modified the earlier ad interim order of injunction by directing both the plaintiff and the defendants to maintain status quo with regard to the nature, character and possession of the suit property till disposal of the said suit.
- (vi) The plaintiff felt aggrieved and thus preferred Misc. Appeal No. 57 of 2022 before the learned First Appellate Court. By the impugned order the First Appellate Court,

however, dismissed the said appeal affirming the order of status quo as passed by the learned Trial Court.

5. In course of his submission Mr. Shibashish Ghosh, learned Advocate appearing for the plaintiff/petitioner in virtual mode submits before this Court that both the Trial Court as well as the First Appellate Court while passing the order dated 01.12.2022 as well as the impugned order respectively failed to visualize that plaintiff in settled possession of the suit property which is evident from the latest records of right as has been filed before the learned Trial Court. It is contended on behalf of the plaintiff/petitioner that both the Trial Court as well as the First Appellate Court did not consider at all that though the plaintiff is the recorded owner of the suit property by virtue of a registered deed of conveyance which has not yet been set aside by any Court of law, the plaintiff's right, title and interest over the suit property is prima facie perfect and, therefore, the defendants has got no right to interfere with the peaceful possession of the suit property. It is further contended by Mr. Ghosh that both the learned Trial Court as well as the First Appellate Court ought not to have passed an order of status quo overlooking the settled possession of the plaintiff over the suit property which is evident from the latest ROR.
6. It is further submitted by Mr. Shibashish Ghosh that in paragraph No. 9 of the application under Order 39 Rule 4 of the Code of Civil

Procedure as filed by the defendants there is a clear admission on the part of the defendants that the defendants are not in possession of any portion of suit property. It is thus contended by Mr. Ghosh that both the learned Trial Court as well as the First Appellate Court while passing the impugned orders made no venture to come to a finding with regard to the actual status of the defendants in respect of the suit property and thus mechanically passed the order of status quo thereby altering the ad interim order of injunction as passed initially.

7. Mr. Shibashish Ghosh thus submits that it is a fit case for allowing the instant revisional application. He further submits that the ad interim order of injunction as passed on 29th September, 2022 by the learned Trial Court be made absolute till disposal of the Title Suit No 483 of 2022.
8. Per contra, Mr. Bikramaditya Ghosh, learned Advocate appearing on behalf of the defendants/opposite party submits before this court that in the application under Order 39 Rule 4 of the Code of Civil Procedure as filed by the defendants it is the specific case of the defendants that their predecessor-in-interest had never conveyed the suit property to any third party including the plaintiff. It is further contended by Mr. Bikramaditya Ghosh that the plaintiff's alleged right, title and interest over the suit property is suspicious since it is the specific case of the defendants/opposite

parties herein that the said deed of conveyance is a fake one. While referring to the title deed as placed before the learned Trial Court it is argued on behalf of the defendants/opposite parties that the alleged admission of possession of the plaintiff over the suit property in the application under Order 39 Rule 4 of the Code of Civil Procedure is a mere typographical error which would be evident from reading of the entire application under Order 39 Rule 4 of the Code of Civil Procedure more specifically immediately preceding paragraphs that is paragraph Nos. 7 and 8 of the application under Order 39 Rule 4 of the Code of Civil Procedure.

9. Mr. Bikramaditya Ghosh, learned Advocate appearing for the defendants/opposite parties thus submits that no interference is called for in respect of the impugned orders.
10. On perusal of the entire materials as placed before this Court and after considering the rival submissions of the learned Advocates for the parties it appears to this Court that before the learned Trial Court the plaintiff has claimed his title as well as possession over the suit property. In order to substantiate such contention the plaintiff has relied upon the deed of conveyance as executed in his favour and he has also produced the current record of right to substantiate his possession. Admittedly, in the application under Order 39 Rule 4 of the Code of Civil Procedure the defendants have

denied the genuineness of such deed by producing their own title deed.

11. However, from the materials as placed before this Court, this Court finds no cogent document at least prima facie that the defendants are in possession of the suit property. As rightly pointed out by the learned Trial Court as well as the First Appellate Court that title to the suit property can be determined by trial of evidence but at the same time it is the bounden duty of the Trial Court to ensure that the suit property be protected, as otherwise the very purpose of filing Title Suit No. 483 of 2022 as filed by the plaintiff would become infructuous.
12. Upon further consideration of the entire materials this Court finds no justification on the part of the learned Trial Court as well as by the First Appellate Court to pass an order of status quo since in considered view of this Court both the said two Courts made no venture to determine the status of the parties in respect of the possession of the suit property although at the time of hearing of the injunction application as well as the application under Order 39 Rule 4 of the Code of Civil Procedure sufficient materials have been placed before the Trial Court to come to a finding with regard to the possession of the parties over the suit property.
13. Before the learned Trial Court the plaintiff has produced the current LRROR which is admittedly a document of possession.

Learned Trial Court has perused the same and came to a finding that the plaintiff has been able to make out a prima facie case for going into trial. At the time of hearing of the injunction application as well as under Order 39 Rule 4 of the Code of Civil Procedure no document could be placed before the learned Trial Court from the side of the defendants to substantiate the exclusive possession of the defendants over the suit property in exclusion of the plaintiff.

14. In view of such, this Court finds no cogent reason on the part of the learned Trial Court as well as on the First Appellate Court to alter the order of ad interim order of injunction by passing an order of status quo.
15. At this juncture, this Court proposes to place its reliance upon the decision of the a Division Bench as cited from the plaintiff/petitioner in FMAT 52 of 2024 (Saroj Saha & Ors. vs. Lalan Prasad Gupta & Ors.) wherein the Hon'ble Division Bench express the following view:

“19. It is moreso when the possession is disputed. The Court before embark its journey on the peripheral of the status quo order, must record the possession of the plaintiff with clarity and lucidity. Blanket order of status quo should be eschewed unless there is a competing circumstances warranting such order but in such situation as well, the Court must record the precise reason in relation to its operation during the pendency of the suit.”

16. In view of the discussion made hereinabove this court thus finds sufficient merit in the instant revisional application.
17. Consequently, the revisional application is hereby allowed.
18. Consequently, the judgment and order dated September 26, 2024 as passed by learned District Judge, Jalpaiguri in Misc. Appeal No. 57 of 2022 and the order dated December 1, 2022 as passed in Title Suit No. 483 of 2022 are hereby set aside.
19. Consequently, the plaintiff/petitioner's application under Order 39 Rules 1 and 2 of the Code of Civil Procedure stands hereby allowed.
20. Consequently, the defendants/opposite parties' application under Order 39 Rule 4 of the Code of Civil Procedure as filed in Title Suit No. 483 of 2022 stands hereby dismissed.
21. Consequently, the ad interim order of injunction as passed on 29.09.2022 in Title Suit No. 483 of 2022 is hereby made absolute till disposal of the Title Suit No. 483 of 2022 as pending before the learned Civil Judge (Junior Division), Jalpaiguri.
22. With the aforementioned observations, the instant revisional application being **CO 202 of 2024** is hereby disposed of.
23. It is, however, made clear that the observation as made hereinabove is purely limited for the disposal of the injunction application and the learned Trial Court is hereby directed not to persuade himself with any of the observations made herein above at the time of final hearing of the Title Suit No. 483 of 2022.

24. Department is directed to forward copies of the judgment to the learned Trial Court as well as to the First Appellate Court forthwith.
25. 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.)