

09.04.2025
Sl. No.23
Ct. No.3
K.S.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

C.O. 50 of 2025

With

I.A. No. CAN 1 of 2025

Md. Sahajahan

-Versus-

Md. Sarafat Hussain & Ors.

Mr. Debanjan Das

.....For the Petitioner

Mr. Bapi Sarkar

.....For the Opposite Parties

This instant revisional application has been preferred assailing the order dated 9th December, 2024 passed in Misc. Appeal No.17 of 2024 wherein learned Additional District Judge, Fast Track Court, Siliguri refused the prayer for ad interim injunction thereby fixing the date for hearing of the temporary injunction petition filed on behalf of the plaintiffs/petitioner herein before the learned Additional District Judge, Fast Track Court, Siliguri in seisin of Misc. Appeal No.17 of 2024.

Learned counsel appearing on behalf of the petitioner has submitted that the title suit was filed with a prayer for declaration and consequential relief against the opposite parties along with an application under Section 39 (1) and (2) read with Section 151 of the Code of Civil Procedure along with a prayer for ad interim injunction, which was refused and assailing that order, he preferred the Misc. Appeal No.17 of 2024 and filed one application before the appellate forum also with a prayer for ad interim injunction, which was refused by the order impugned.

Learned counsel appearing on behalf of the petitioner has submitted that the petitioner, who is the exclusive owner of the land mentioned in the schedule to the plaint, but the defendants/opposite parties herein have already encroached portion of the land and damaged all tea plantation on the land owned by the petitioner and necessary protection is required to be promulgated by the Court.

On a careful perusal of the order impugned, I find that learned appellate forum pointed out incorrect identification of the land in question

in the schedule to the plaint. However, at this stage, learned counsel appearing on behalf of the petitioner submits that injunction application under Order 39 Rule 1 and 2 is still pending before the learned appellate forum and necessary direction may be given to the learned appellate court to dispose of the injunction application within a specified period.

On the other hand, learned counsel appearing on behalf of the defendants/opposite parties herein submitted that the suit is not maintainable in terms of the provision of Section 34 of the Specific Relief Act.

On a careful scrutiny of the order impugned, I do not find any infirmity or irregularity in disposing of an application with a prayer for ad interim injunction during pendency of the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure and accordingly, I hardly find any scope to exercise the supervisory jurisdiction under Article 227 of the Constitution of India.

In the aforesaid view of the matter, the revisional application being, C.O. 50 of 2025 along with connected application being, I.A. No. CAN 1 of 2025 stands disposed of with a request to the learned Additional District Judge (Fast Track Court at Siliguri) to dispose of the injunction application under Order 39 Rule 1 and 2 of the Code of Civil Procedure as expeditiously as possible preferably within the next date fixed therefor without giving any unnecessary adjournment to either of the parties.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Bibhas Ranjan De, J.)