

S/L 48
07.01.2025
Court. No. 3
Suvayan

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

CO 230 of 2024

**Sri Rameshwar Shah alias
Ramesh Shah & Anr.
Vs.
Sri Karambir Singh**

*Mr. Bikramaditya Ghosh
Mr. Sitesh Gupta
Ms. Supriya Singh
Mr. Vivek Saha*

...for the petitioners.

*Mr. Subham Gupta
Mr. Reshab Kumar
Mr. Debayan Goswami*

...for the opposite party.

1. Learned Advocate for the opposite party undertakes to file vakalatnama in connection with instant case in the department in course of this day. In the event such vakalatnama is filed department is directed to tag the said vakalatnama of the opposite party with the instant case record.
2. In this revisional application as filed under Article 227 of the Constitution of India the Order No. 2 dated December 10, 2024 as passed by the learned Civil Judge (Junior Division) at Siliguri in Title Suit No. 222 of 2024 is impugned. By the impugned order leaned Trial Court refused to pass an *ad interim* order of injunction in the form *status quo* in an application under Section 94 of the Code of Civil Procedure as filed by the plaintiff and at the same time also refused to pass an order for appointment

of an advocate commissioner under Order 39 Rule 7 of the Code of Civil Procedure.

3. The plaintiffs 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 by the plaintiffs/petitioners are required to be dealt with in a nutshell.
5. It is the plaint case in Title Suit No. 222 of 2024 that the plaintiffs are the joint owners of the suit property and they were in settled possession of the same. It is the further plaint case that taking advantage of the advanced age of the plaintiffs the defendant was making an attempt to disposes the plaintiffs from the suit property and thus the plaintiffs have prayed for a decree for declaration, decree for permanent injunction along with other ancillary reliefs. In the said suit the plaintiffs have come forward with an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure with a prayer for *ad interim* order for injunction. However, such prayer was not considered favourably by the learned Trial Court and the learned Trial Court directed the plaintiffs to serve notice upon the defendant who had lodged a caveat prior to the filing of the said suit and thus fixed a returnable date.
6. On the returnable date the plaintiffs have come forward with another application under Section 94

of the Code of Civil Procedure along with an application under Order 39 Rule 7 of the Code of Civil Procedure. In their application under Section 94 of the Code of Civil Procedure the plaintiffs have stated that during the pendency of the suit the defendant has entered into the suit property and thus in the said application under Section 94 of the Code of Civil Procedure plaintiffs apprehended that in the event the defendant changes the nature and character of the suit property, the very purpose of filing Title Suit No. 222 of 2024 would become infructuous and accordingly the plaintiffs had prayed for an *ad interim* order of *status quo* which was turned down by the learned Trial Court by the impugned order. By the self-same impugned order learned Trial Court also rejected the plaintiffs' application for appointment of a commissioner for local inspection *ex parte*.

7. Mr. Ghosh, learned Advocate appearing on behalf of the plaintiffs/petitioners submits before this Court that the impugned order is required to be set aside inasmuch as the learned Trial Court has failed to visualize the extreme urgency as pleaded by the plaintiffs in their application under Section 94 of the Code of Civil Procedure. It is further submitted by Mr. Ghosh that in the event the *ad interim* order of *status quo* as sought for before the learned Trial

Court is not granted the very purpose of filing the said Title Suit would become infructuous.

8. In his next fold of submission Mr. Ghosh further submits that from the schedule of the application for commission it would reveal that inspection report on the point as mentioned in the said schedule is very much necessary for proper adjudication of the said suit which the learned Trial Court has failed to visualize. Mr. Ghosh thus submits that the instant revisional application may be allowed by setting aside the impugned order.
9. *Per contra*, Mr. Gupta, learned Advocate appearing on behalf of the defendant/opposite party submits before this Court that the instant revisional application is not at all maintainable. It is further submitted by Mr. Gupta that the plaintiffs/petitioners have not come forward with clean hands and they have not disclosed that over the suit property a *status quo* order has been passed by a co-ordinate Bench in a writ proceeding and the same is still subsisting. It is further contended that since the defendant/opposite party is in settled possession of the suit property learned Trial Court is very much justified in not granting *ad interim* order of injunction as prayed for in the application under Section 94 of the Code of Civil Procedure.
10. In his next fold of submission Mr. Gupta further submits that on perusal of the petition as filed under

Order 39 Rule 7 of the CPC it would reveal that the very purpose of filing the said application is to collect evidence which is not permissible in the eye of law and, therefore, there cannot be any justification to interfere with the order impugned.

11. Upon consideration of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears to this Court that the plaintiffs/petitioners have been compelled to file their application under Section 94 of the Code of Civil Procedure on a charged circumstances since after filing of the Title Suit No. 444 of 2024 and during the pendency of the said suit according to the plaintiffs the defendant entered into the possession of the suit property.
12. By filing the said application under Section 94 of the Code of Civil Procedure the plaintiffs have apprehended that after taking possession of the suit property the defendant may change the nature and character of the suit property and if the same is permitted to be carried out, the very purpose of filing the said suit would become infructuous and for the aforesaid reason the plaintiffs has prayed for an order of *status quo* only.
13. On perusal of the copy of the petition under Section 94 of the Code of Civil Procedure it appears to this Court that the learned Trial Court has miserably failed to visualize that the plaintiffs have a *prima*

facie case and so far as the balance of convenience and inconvenience is concerned, the convenience is in favour of the plaintiffs. Learned Trial Court has also failed to visualize that in the event the *ad interim* order of *status quo* as prayed for is not granted, the plaintiffs may suffer irreparable loss and injury.

14. In further considered view of this Court it is settled principle of law that the Court must be very slow in granting an order of *status quo* without ascertaining the status of the parties. On further perusal of the petition under Section 94 of the Code of Civil Procedure it appears that plaintiffs have admitted that after filing of the said suit the defendant has entered into the possession of the suit property and, therefore, status of possession of the defendant over the suit property is not disputed.
15. In view of the facts and circumstances this Court finds no reason on the part of the learned Trial Court in not passing the *ad interim* order of *status quo* as prayed for. In further considered view of this Court learned Trial Court has failed to visualize the extreme urgency as pleaded by the plaintiffs/petitioners before him since the plaintiffs on affidavit expressed their apprehension that the defendant may change the nature and character of the suit property.

16. In view of such, this Court thus considers that the order impugned as passed by the learned Trial Court is required to be interfered with so far as the prayer made under Section 94 of the Code of Civil Procedure is concerned.
17. On perusal of the petition under Order 39 Rule 7 of the Code of Civil Procedure this Court is in agreement with Mr. Gupta, learned Advocate for the defendant/opposite party that no fruitful purpose would be served in allowing the said application for commission since the spirit of Order 39 Rule 7 of the Code of Civil Procedure is not for collection of evidence.
18. In view of such, the order impugned so far as the rejection of the application for commission requires no interference.
19. Consequently, the instant revisional application is allowed in-part. Let there be an order of *ad interim status quo* over the suit property in Title Suit No. 222 of 2024 till disposal of the application under Section 94 of the Code of Civil Procedure.
20. Liberty is given to the defendant/opposite party herein to file the written objections against the plaintiffs' application under Order 39 Rules 1 and 2 of the Code of Civil Procedure and plaintiffs' application under Section 94 of the Code of Civil Procedure within 30 days from today after serving

copies of the same to the learned Advocate for the plaintiffs before the Trial Court.

21. In the event such written objections are filed learned Trial Court is directed to dispose of the aforementioned two applications viz., Order 39 Rules 1 and 2 of the Code of Civil Procedure and Section 94 of the Code of Civil Procedure positively within the last day of February, 2025.
22. It is made clear that the observation as made hereinabove is purely limited for the disposal of the instant revisional application and learned Trial Court is hereby requested not to persuade himself with any of the observations as made hereinabove at the time of disposal of the aforementioned two applications on its merit.
23. Learned Trial Court is directed to act on the server copy of this order.
24. Liberty is given to the learned Advocate for the plaintiffs/petitioners to communicate the server copy of this order to the learned Trial Court.
25. With the aforementioned observations, the instant revisional application being CO 230 of 2024 is disposed of.
26. 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.)