

In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side

19 30.3.2026
Sc Ct. no.6

Case No. : **C.O. 864 OF 2026**

In the matter of : Raihan Ul Haque & Ors.
.... Plaintiffs/ Petitioners

VS.

Prantik Sangha Club & Anr.

.... Defendants/ Opposite Parties

For the Plaintiffs/ Petitioners:

Mr. Saptansu Basu, Sr. Adv.
Mr. Kallol Basu
Mr. Suman Banerjee
Mr. Joy Das.

....Advocates

For the Defendants/ Opposite Parties:

Mr. Partha Sarathi Bhattacharyya,
Sr. Adv.
Mr. Raju Bhattacharyya.

....Advocates

1. Affidavit-of-service, filed by the petitioners in Court, today is taken on record.
2. This revisional application is directed against an order dated February 10, 2026 passed by the learned Civil Judge (Senior Division), Suri, Birbhum whereby the petitioners' application under Section 151 of the Code of Civil Procedure, 1908 (hereafter referred to as 'the Code') seeking permission to "*undertake protected and non-intrusive developmental works at 'B' schedule property during pendency of the suit*" has been rejected.

3. The petitioners as plaintiffs have instituted a Title Suit No.74 of 2020 before the learned Civil Judge (Senior Division), Suri, Birbhum praying for declaration and injunction.
4. In the said suit, an application for temporary injunction under Order 39 Rules I and II of the Code was filed by the petitioners. Such application was allowed on contest on October 10, 2023 thereby observing that the plaintiffs had established "*the prima facie case in their favour on the basis of deed of ownership and the question raised on the basis of the document filed has to be adjudicated by trial court on taking evidence*".
5. By the said order, the defendants/opposite parties were restrained from making any construction over the 'B' schedule property mentioned in the plaint and/or from causing any damage to the suit property till disposal of the suit.
6. During pendency of the suit, the petitioners filed an application under Section 151 of the Code praying, *inter alia*, for permission of the Court to carry out certain developmental works that were reversible and temporary in nature.
7. The petitioners undertook to abide by any condition or restriction imposed by the Court and, not to claim any additional right over and above what had been pleaded in the plaint, by virtue of such work as well as to bear all costs and responsibilities

associated with such developmental works. Such application has been rejected by the order impugned while observing holding, *inter alia*, that “*permission for carrying out works within the lawful limits of ownership, as claimed by the plaintiffs, is not possible unless their ownership over the property is declared*”.

8. Mr. Basu, learned Senior Advocate appearing for the petitioners submits that by the order impugned, the petitioners have been prevented from carrying out works of temporary nature over the property in suit although no order of injunction was passed against the petitioners at any point of time.
9. It is further submitted that the application under Section 151 of the Code was not even necessary but the same was necessitated in view of the fact that the beautification works, sought to be undertaken by the petitioners, were resisted by the opposite parties.
10. Mr. Bhattacharyya, learned Senior Advocate appearing for the opposite parties submits that the application for carrying out beautification and other works, as made by the petitioners, does not state that any resistance was put up or that the defendants impeded any beautification work as alleged by Mr. Basu, learned Senior Advocate appearing for the petitioners.

11. It is further submitted that in any case, the learned trial Court has not come to a conclusion that the petitioners are in possession of the property in question.
12. Relying on the judgments of the Hon'ble Supreme Court in the case of ***Ram Prakash Agarwal & Anr. vs. Gopi Krishan & Ors.***, reported at **(2013) 11 SCC 296** and ***Nahar Industrial Enterprises Ltd. vs. Hong Kong & Shanghai Banking Corporation*** reported at **(2009) 8 SCC 646**, Mr. Bhattacharya submitted that the learned Trial Court has rightly passed the order impugned inasmuch as, the direction prayed for by the petitioners by way of an application under Section 151 of the Code could not have been granted by the learned trial Court.
13. Heard learned Advocates appearing for the respective parties and considered the materials on record.
14. It is not in dispute that by the order dated October 10, 2023 the defendants had been restrained from making any construction over the 'B' schedule property mentioned in the plaint and/or for causing any damage to the said property till disposal of the suit. There was no injunction of any kind passed against the petitioners by the aforesaid order.
15. The petitioners by their application under Section 151 of the Code have sought permission to carry

out certain works which the petitioners assert are reversible and temporary in nature and regarding which the petitioners have clarified, that they would not claim any equity on right in addition to what has been claimed in the plaint.

16. While considering such application the learned Trial Court has made an observation that permission for carrying out such works can only be granted if ownership over the property is declared. If there is no order of injunction restraining the petitioners, then unless there is any other legal or statutory prohibition, and unless it is found that the petitioners are not in possession such an observation could not have been made, more so when the learned Trial Court had in the order dated October 10, 2023, itself found the petitioners to be having a *prima facie* case “on the basis of deed of ownership” and on that basis had injuncted the defendant in the suit from raising construction. In such view of the matter, the order impugned cannot be sustained.

17. Insofar as the judgments in the case of **Ram Prakash Agarwal** (supra) and **Nahar Industrial Enterprises Ltd.** (supra) are concerned the same are salutary insofar as the object and purpose of Section 151 of the Code are concerned and applying the same, the order impugned cannot be justified.

18. Mr. Basu submits that the petitioners intend to file a fresh application before the learned Court with better particulars. The petitioners shall be at liberty to file a fresh application in accordance with law, which shall be considered by the learned Trial Court and decided independently and on its own merits, in accordance with law without being influenced by any observation made herein above.

19. C.O. 864 of 2026 stands disposed of.

20. Photostat certified copy of this order, if applied for, be furnished expeditiously after completion of all formalities.

(Om Narayan Rai, J.)