IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Supratim Bhattacharya

CO 1637 of 2025
With
IA NO: CAN 1 of 2025

Akaron Roy
Vs.
Mridula Bachar & Ors.

For the Appellant : Mr. Krishna Das Poddar
Ms. Mandira Barman.
For the Opposite party : Mr. Susenjit Banik
nos. 1 to 3 Mr. Sanjib Seth

Delivered On : 12.11.2026

Supratim Bhattacharya, J.:

1. The present application under article 227 of the Constitution of India has been preferred by the petitioner / appellant / defendant being dissatisfied by the judgment dated the 7th day of March 2025 passed in the miscellaneous appeal being Miscellaneous Appeal No. 170 of 2024 by the learned District Judge Howrah, whereby the said miscellaneous appeal has been dismissed as the impugned order therein, that is the order dated 20. 09. 2024 passed by the learned Civil Judge (Senior

Division) 3rd Court Howrah in Title Suit No. 170 of 2023, has been found to be justified.

2. The factual matrix of the lis is that the respondents being the plaintiffs filed a title suit seeking partition of the suit property, as mentioned in the ' C ' schedule of the plaint. According to the respondents / plaintiffs the property erstwhile belonged to one Annada Prasad Dhali and on the death of the said Annada Prasad Dhali the property devolved upon his four legal heirs in equal proportion. Among the said four legal heirs Brajabala was one of them. The respondents being the legal heirs of the said Brajabala have become co-sharers in respect of the suit property. As such the respondents preferred the suit seeking declaration of cancellation of two deeds along with partition and injunction.

3. An application under order XXXIX Rule 1 and 2 of the Code of Civil Procedure, seeking *ad interim* injunction has been filed on behalf of the plaintiff. The learned trial judge on 04.04 2023 passed *ad interim* order of injunction directing both parties namely the plaintiffs and the defendants No.1 and 2 to maintain *status quo* in respect of the nature, character and possession in respect of the suit property 'mentioned in schedule ' C'.

4. Thereafter written objection against the application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure has been filed on behalf of the defendants No. 1 and 2. Through the said written objection the said defendants placed in their defence that Gunadhar being the sole legal heir of Annada Prasad Dhali became the

absolute owner in respect of the suit property left behind by the said Annada Prasad Dhali. It is also the contention of the said objectors / defendants that the name of Gunadhar was recorded in the record of rights. Relying upon the aforementioned contentions the objectors/defendants prayed for rejection of the application for injunction filed by the plaintiffs.

5. After hearing the learned counsels representing the petitioners/plaintiffs and the opposite parties/defendants the learned trial court passed an order of injunction directing the parties to maintain *status quo* in respect of the nature, character and possession of the suit property.

6. Being dissatisfied by the order of temporary injunction passed by the learned trial judge, the defendants preferred the said miscellaneous appeal being Miscellaneous Appeal No. 170 of 2024, wherein the learned District Judge Howrah after hearing the learned counsels representing the appellants/defendants and the respondents/plaintiffs dismissed the miscellaneous appeal finding the order of temporary injunction passed by the Ld. trial judge to be not unjustified. This order/judgment passed by the learned District Judge Howrah dated 7th of March 2025 is the impugned order which has been assailed by the petitioners herein.

7. The Ld. Counsel representing the petitioner during his exhaustive submission has agitated several issues which are as follows:

   i. That the suit filed by the plaintiffs is barred by limitation. While projecting this issue the Ld. Counsel has placed prayer (a) of the

plaint and submitted that through the said prayer the plaintiffs have sought for a decree for declaration that the registered deeds of conveyance as described in item nos. I and II in the 'D' schedule of the plaint are illegal , void, fraudulent , invalid, vague, baseless and not binding upon the plaintiffs as well as upon the defendants No. 9 to 31 .

ii. The Ld. Counsel has submitted that the plaintiffs have sought for cancellation of the deed whereby the seller, from whom the petitioner /defendant has purchased the self-same quantity of property that is from the legal heirs of Gunadhar Dhali in the year 2015 and the plaintiffs have also sought for cancellation of the deed by which this petitioner defendant has purchased the property being 8 decimals of land in the year 2023.

iii. He has submitted that as per the Limitation Act challenge to a deed has to be made within 3 years from the execution and registration of the said deed and in the present case the suit has been filed seeking cancellation of a deed of the year 2023, while the earlier deed of the vendor of the petitioner/ defendant has been of the year 2015, so after about 8 years the opposite parties plaintiffs have sought for cancellation of a deed, which is beyond the permissible limit as per the Limiation Act. He has further submitted that in the deed of 2015 the husband of the respondent No. 1/plaintiff No.1 and the father of the

respondents No.2 and 3/ plaintiffs No. 2 and 3 namely Ajit Bachar had signed on the said deed as a witness to the said deed, so the husband/father of the respondents/plaintiffs being a witness to the said deed of the year 2015, the respondents/plaintiffs cannot raise the issue of cancellation of the deed after 8 years of execution and registration of the said deed as they were well aware of the said deed as their predecessor had been a witness to the said deed. So the prayer for cancellation of the said deed of the year 2015 is not at all tenable in the eye of law, being barred by the law of limitation and consequently the said deed of the year 2023 through which the petitioner defendant purchased the property banking upon the deed of the year 2015 cannot be sought to be void being barred by limitation.

iv. He has further submitted that the suit is barred under Section 34 of the Specific Relief Act and also is hit by the provision of Order II Rule 2 of the Code of Civil Procedure, 1908 as the plaintiffs have not sought for consequential reliefs. He has further submitted that the plaintiffs are barred under the principles of estopple, waiver and acquiscence.

v. The Ld. Counsel has reiterated that the plaintiffs were well aware of the transfer of interest taking place during the year 2015 and at such belated stage that is after 8 years, cannot pray for

cancellation of the deed. He has further submitted that a club and other persons have been incorporated as parties to the suit being a proceeding seeking partition who are not co-sharers, on the contrary they are third parties outsiders.

vi. The Ld. Counsel has further submitted that the predecessor in interest of his vendor's vendor namely Anondomohan Dhali was the owner of 23 decimals of land out of which 8 decimals of land was purchased by Biren Hati , the person from whom the petitioners purchased, whereas out of the 15 decimals of property left over a small portion of the said property had been acquired by the State to construct road, while the remaining major portion has not vested in favour of the State which is lying with the plaintiffs, but in respect of the said property lying in favour of the plaintiffs have not been included in the hotchpotch of the suit, as such the suit is a faulty one having been impleaded unnecessary parties and lacking some property to be impleaded within the schedule which is to be partitioned.

vii. The Ld. Counsel has further submitted that the suit which has given rise to the present revisional application is nothing but a collusive one between the plaintiffs and the club. He has further submitted that apart from Gunadhar Dhali no other person had the right over the suit property as because the said Annadaprasad Dhali has expired during the year 1955 that is

prior to the coming into force of the Hindu Succession Act, 1956 whereby the other legal heirs of Annada Prasad Dhali that is his three daughters did not acquire any right or interest over the property left by Annada Prasad Dhali apart from his only son namely Gunadhar Dhali.

viii. The Ld. Counsel has finally stressed upon the issue that through the order of *ad interim* injunction dated 04.04.2023 and the order of temporary injunction dated 20.09.2024 the Ld. Trial Court has only directed, both the parties that is the plaintiffs and the defendants No. 1 and 2 that is the petitioners, to maintain *status quo* in respect of the nature , character and possession of the schedule C mentioned suit property which is a vague order having not mentioned any details explicitly. He has also submitted that the Hon'ble Apex Court has time and again opined that a vague order of *status quo* which has been passed in the title suit is not to be passed without giving any details about the status prevailing on the date of passing of the order of *status quo*. In support of his contention the Ld. Counsel has relied upon an authority reported in ***(2006) 3 SCC 312*** and stressed upon the point that the Hon'ble Apex Court has stated in Paragraph-5 that "*it is necessary to notice at this stage that in an original suit of this nature , it was not appropriate for the additional District*

Judge to pass an order directing the parties to maintain status quo, without indicating what the status quo was. ..... " . He has also relied upon a judgment of the Hon'ble Apex Court reported at ***(2017) 3 SCC 702*** .

ix. The Ld. Counsel has also submitted that as regards to the properties mentioned in the B schedule of the plaint nothing has been explained by the opposite parties and the B schedule property has not been satisfied, as because out of the remaining 15 decimals of land only a small portion of land was acquired while the remaining portion was left over. Ld. Counsel representing the petitioner further submitted that the order passed by the Ld. Trial Court while passing the order of injunction is a cryptic one and has not been dealt in details as such it requires interference and so this present civil revision is required to be allowed.

8. *Per contra* the Ld. Counsel representing the opposite parties submitted that

i. In the Paragraph 10 of the revisional application the petitioners have admitted the fact that Annada Prasad Dhali died intestate sometime in the year 1955 leaving behind his only son Gunadhar Dhali who acquired all the estate of Annada Prasad Dhali, as because Saraju Dhali the wife of Annada Prasad Dhali had predeceased him. He has further mentioned

that the daughters had no right of inheritance at that relevant point of time and the Record of Rights under Sarenga Mouja reveals that Annada Prasad was the owner in respect of the property in Sarenga Mouja and after his death , Gunadhar Dhali was the only raiyat in respect of the said property.

ii. He has further submitted in respect of his contention that the Ld. Counsel representing the petitioners has not produced an iota of evidence. He has further submitted that no specific date of death has been mentioned by the petitioners either in the written statement or in the written objection to the injunction application.

iii. The Ld. Counsel has further submitted that after discussion the Trial Court has passed the order of *status quo* which has been affirmed in the miscellaneous appeal by the Ld. District Judge Howrah.

iv. The Ld. Counsel representing the opposite party has relied upon two authorities one being reported at ***1994 1 Calcutta Law Times 58*** and the other published in ***2024 2 ICC 496*** and has emphasized that the Ld. Trial Court while granting the order of injunction has relied upon three issues which are the basic issues that is prima facie case , balance of convenience and irreparable loss and injury.

Banking upon the ingredients the Ld. Trial Court has passed the order of status quo and has mentioned in the said order that the *status quo* was in respect of nature, character and possession of the Schedule C mentioned in the plaint which has been affirmed by the Ld. District Judge in the miscellaneous appeal, as such the impugned order is not required to be interfered with.

9. From the submission of the Ld. counsels representing the petitioner /defendant and the opposite parties/ respondents/ plaintiffs, it transpires that the petitioner defendant is agitating the fact that the deeds which have been sought for to be declared as cancelled are time-barred. It is also the contention of the learned counsel representing the petitioner defendant that the suit in addition to being time-barred is also liable to fail on the ground of joinder of unnecessary parties. It has also been raised on behalf of the petitioner that the order of *status quo* is a vague order.

10. The crux is as to whether at this stage of the proceeding a suit can be decided finally as being time-barred or it is to be decided finally as to whether the suit is to fail on the ground of joinder of unnecessary parties.

11. The present petition has arisen because of order granting temporary injunction in the nature of *status quo* in respect of the nature, character and possession of the suit property. Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 lays down specifically as

regards to the cases in which temporary injunction may be granted and Order XXXIX Rule 2 specifically lays down the circumstances when injunction may be granted to restrain repetition or continuance of breach.

12. At this stage the three points which are to be taken into consideration are :-

(a) prima facie case,

(b) balance of convenience and inconvenience and

(c) irreparable loss and injury.

13. While granting injunction a court must also take into consideration the conduct of the parties. At this stage no further issues are required to be considered, as such the reason given in the impugned judgment that there is no scope of holding mini trial at this stage is not at all incorrect as per the view of this court.

14. As regards to *status quo* it has been mentioned that the order of status quo is in respect of nature, character and possession of the suit property, as such there is no vagueness as regards to the order of *status quo*.

The authority published at ***(2006) 3 SCC 312*** relied on behalf of the petitioner applicant does not help the petitioner in this case as because the orders passed by the learned trial court states that *status quo* is in respect of the nature, character and possession of the suit property,

while the other authority published at (***2017) 3 SCC 702*** is also of no help to the petitioner/ applicant as because in the said judgment the Hon'ble Apex Court has dealt with the issue that judgment and decree granting relief with respect to property other than described in the plaint is unsustainable, whereas in the present lis it is not the case that the suit has been finally decided and that too in respect of property which is not mentioned in the schedule. As such both the judgments relied upon by the applicant petitioner is not at all applicable in the present lis.

15. So from the aforementioned discussion this Court is of the view that the impugned judgment dated the 7th day of March 2025 passed by the learned District Judge, Howrah in Miscellaneous Appeal No. 170 of 2024, does not require interference.

16. Hence the present petition/application being **CO 1637 of 2025** filed under Article 227 of the Constitution of India **fails.** Accordingly **CAN 1 of 2025** is also **disposed of**.

17. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

18. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)