

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O. 3777 of 2024

**Sri Basudev Das & Ors.
Vs.
Smt. Gita Rani Deb**

For the Petitioner : Mr. Gopal Chandra Ghosh
Mr. Rajkrishna Mondal
Ms. Sunanda Saha

For the opposite party : Mr. Nilendra Narayan Ray

Heard on : 21.04.2026

Judgment on : 04.05.2026

Dr. Ajoy Kumar Mukherjee , J.:

1. The subject matter of challenge in the instant Revisional Application, preferred at the instance of the petitioners is the order dated 23rd August, 2024 passed by learned Additional District Judge, Haldia in Misc. Appeal no. 20 of 2024, by which the court below has dismissed the said appeal and modified the order dated 15th January, 2024 passed by learned Civil Judge (Jr. Divn.) Haldia in T.S. no. 46 of 2020.

2. The petitioner's case is that they were owners of land measuring 1acre 12 decimal in plot no. 155/440 out of total 1acre 38 decimal and the

residue 26 decimal was under their Barga cultivation. Thus, the petitioners were in actual physical possession of the entire 1 acre 38 decimal of land. Thereafter the petitioners sold 50 ½ decimal from said plot to plaintiff Gita Rani Dev on 11.08.2022 being 48 decimal on the western side and 2 ½ decimal in the middle eastern portion. The opposite party herein as plaintiff claims her right to approach the public road at plot no. 122 through a strip of land measuring 132 ft. ("BaramPath" in colloquial term) mentioned in "ka-1" schedule in the said suit schedule and also prays for a permanent injunction over the said passage against the petitioners. The main point of controversy is whether there was any arrangement for plaintiff's ingress and egress to reach their portion through that Baram Path, which defendants allegedly blocked.

3. Learned Civil Judge (Junior Division) allowed the plaintiff/opposite party's injunction application with the following observation:-

"plaintiff and defendants are directed to maintain status quo with regard to the nature, character and their respective possession over the "Ka" Schedule property to the plaint till disposal of the suit".

4. The said order passed by the trial court was assailed before the appellate court who modified the order with the following observation:-

"The impugned order dt. 15.01.2024 passed by ld. Civil Judge (Jr. Div.) Haldia in T.S. No. 46 of 2020 is modified to the extent that both parties are directed to maintain status-quo in respect of narrow path in suit plot Nos. 154 & 155/440 which leads to the land of the plaintiff ('ka' schedule property) in plot No. 155/440 from the public road. Defendants are hereby directed not to prevent the plaintiff from using the narrow pathway('ka/1' schedule property) which is situated on the extreme North of suit plot No.154 & 155/440 for the purpose of her cultivation. At the same time, I also make it clear that the plaintiff shall use the said narrow path only for the purpose of cultivation in respect of her land in suit plot No. 155/440. Accordingly, the impugned order dt. 15.01.2024 passed by ld. Civil Judge (Jr. Div.) Haldia is hereby modified. The order of temporary injunction in the form of status-quo shall remain in force till the disposal of Title Suit No. 46 of 2020."

5. Being aggrieved by the aforesaid order, Mr. Gopal Chandra Ghosh, learned Counsel on behalf of the petitioners submits that both the courts below have been misled by the expression '*Barampath*' but have not considered the commissioner's report and the sketch map in its proper perspective, because it has been clearly mentioned in the report that the said narrow passage is only within the defendant/petitioners' property wherein they have cultivated various vegetables and the path is meant for collecting vegetables by them and is not extended to the portion of land of plaintiff/opposite party herein in the west.

6. He further submits that though plaintiff in her plaint has made out a case that from the date of purchase of the "ka" schedule property from the defendants, she has been using the said so called path till date as used by her predecessors viz, her father in law and her husband but from the title deed by which the defendants/petitioners have purchased the suit properties in 2002 from the plaintiffs husband, Manoj Kumar Dev, there appears to be no recital nor any map annexed to show that there was any ever existence ever of the suit passage (barampath) as claimed by the plaintiff opposite parties.

7. Moreover, title deed of the plaintiff/opposite party by which she admittedly purchased the suit property in turn from the defendants/petitioners, dated 11.06.2022 does not show either in the recital or in the sketch map, attached thereto any trace of such "*barampath*". Therefore the basis of the plaint case that there exists pathway over 'ka-1' schedule as claimed in the plaint does not have any leg to stand and as such she is not entitled to get any order of injunction.

8. Mr. Ghosh further submits that though plaintiff/opposite party also made an attempt to establish her claim over the pathway (barampath) on the plea that her purchased land has become landlocked and she has right to use the suit passage as an easement of necessity, but such plea has been negated in the commissioner's report. It has been clearly mentioned as local feature that said passage is confined within the defendant/petitioner's land and it is neither extended to the plaintiff's land nor connected to the public road. The record of rights in respect of the defendant/petitioners land in Dag No. 154 and 155/440 also does not show the existence of any pathway.

9. He further argued that learned courts below should have relied upon the title deeds for the purpose of ascertainment of the opposite party's right of pathway through and across the petitioner's land by relying upon the commissioner's report which shows the petitioner's own arrangement for using their land for the purpose of cultivation and growing vegetables within the said plot and the same cannot be treated as common pathway. Therefore, when the title deeds do not disclose existence of any pathway as claimed by the opposite party, she cannot claim any such pathway out of her own. Apart from that all the lands surrounding the plaintiffs purchased land belongs to her husband Manoj Kumar Dev and the nature of land being agricultural land, she has every right to use such adjacent land for her access through the public road. The courts below have committed serious mistake by relying upon the contention of the plaintiff that she has been land-locked or that she has acquired right by way of easement of

necessity. Therefore the petitioners have prayed for setting aside the aforesaid impugned order.

10. Mr. Ray learned counsel appearing on behalf of the opposite party contended that 'ka-1' schedule in the suit plot no.154 and 155/440 are the part and parcel of 'kha' schedule property to the plaint, which originally belonged to Harahari Dev (deceased father in law of plaintiff). Predecessor of defendant used to cultivate land under Harahari Dev. Subsequently dag no. 155 was divided into three parts 155/439, 155/440 and 155/441 out of which plot no. 155/440 is mentioned as 'ka' schedule and plot no. 154 is adjacent to plot no. 155/440. On the eastern side of plot no. 154, there is a government path and plot no. 155/440 is situated on the adjacent western side of plot No. 154. The Baram Path is on the northern side of boundary line of plot no. 154, which was created by original owner Harahari Dev and barampath (suit passage) is mentioned in "ka-1" schedule to the plaint which was used by plaintiff's said father in law Harahari for the purpose of cultivation over "ka" schedule property to the plaint. Harahari executed Nirupan Patra and thereby transferred all his landed properties in plot no. 154 and 154/440 in favour of plaintiff's husband Manoj, who also used the said Baram Path for egress and ingress to suit plot no. 155/440. Thereafter Manoj transferred entire land in plot no. 154 in favour of defendants on 27.02.2001 and again he transferred entire land in plot no. 155/440 in favour of defendants. Defendants thereafter transferred 50 ½ decimal of land in plot no. 155/440 in favour of plaintiff. Plaintiff after purchasing 'ka' schedule property from the defendants started using the baram path over "ka-1" schedule for entering

'ka' schedule property from the government Road in plot no. 122 as was used by her husband and her father-in-law.

11. According to opposite party/plaintiff the Barampath i.e. 'ka-1' schedule property to the plaint is the only pathway from the government road which extended to 'ka' schedule property and there is no other way for entering into the 'ka' schedule from the Government Road. The father in law and the husband of the plaintiff used the said barampath (ka-1 schedule property) and for which the defendants have no right to deny user of the said path. All on a sudden on 10th February, 2020 the defendants informed the plaintiff that they would not allow her to use the suit passage and they had made arrangement for fencing the 'ka-1' schedule property.

12. He further submits that admittedly the defendants executed a sale deed on 11.06.2002 in favour of plaintiff and by dint of said sale deed, the plaintiff acquired 50 ½ decimal of land in plot no. 155/440. It is also not in dispute that Nagendra Nath Das, the father of predecessor of present defendants was a bargadar under Hara Hari Dev, the father of Manoj Kumar Dev in respect of suit plot and after the death of Nagendra Nath defendants became the Bargadar in respect of the suit plot.

13. He submits that according to the plaint case, the plaintiffs land in suit plot no. 155/440 is used for cultivation purpose. It is not in dispute that the landed properties in an around plot no. 155/440 are all cultivable lands and the suit land was purchased by the plaintiff from the defendants/petitioners. The suit passage was being used by her predecessor for cultivation in the suit plot no. 150/440 and after purchasing the same she has been using the said path for cultivation

purpose. Opposite party's further contention is that it is revealed from the report of first commissioner that there exists a path which leads to the land of the plaintiff in plot no. 155/440 from the public road. Though in the sale deed of plaintiff and in the deed of Manoj Kumar Dev, There is no mentioning of any passage which leads to the land of the plaintiff in suit plot no. 155 /440 from the public road but the fact remains that the defendants did not state as to any other alternative path which leads to the land of the plaintiff in suit plot no. 155/440. Even in the second report submitted by Advocate Commissioner Alok Kumar Mallick, there is no mention about any alternative path for entering into the land of the plaintiff in suit plot no. 155/440. Plaintiff in his plaint has specifically stated that "ka 1" schedule property to the plaint is the only path for entering into her land in suit plot no. 155/440, which she purchased from the defendants and prior to her purchase, her husband and father-in-law were using the said path for the purpose of cultivation in suit plot no. 155/440. The question as to how the land of the plaintiff in suit plot no. 155/440 was being used for the purpose of cultivation prior to transfer of said land in favour of the plaintiff, can only be decided after taking evidence during trial. The existence of 'barampath' and usage of right to easement is a matter of evidence which cannot be decided at this stage. Therefore, the courts below were justified in passing order in favour of plaintiff/petitioner since she has made out a prima facie case and also because she will suffer irreparable loss and injury, if no order of injunction is granted in respect of the narrow pathway over "ka-1" schedule property which extends form the public road to the land of plaintiff in suit plot no. 155/440 i.e. "ka"

schedule through extreme north of suit plot no. 154 and 155/440. Therefore, the order impugned does not call for any interference.

Decision

14. Learned Court below observed that it is not in dispute that 6 decimal of land in suit plot no. 154 and 4 acre 8 decimal of land in suit plot no. 155 originally belonged to the father-in-law of the present plaintiff/opposite party herein namely Hara Hari Dev. It is also not in dispute that predecessor of present petitioner/defendants Nagendra Nath Das was a bargadar under aforesaid Hara Hari Dev. Therefore after demise of Nagendra, the defendants stepped into the shoes of their predecessor in respect of possession in the suit property. Admittedly aforesaid Harahari transferred the land in suit plot no. 154 and 154/440 along with other non-suited properties in favour of his son Manoj Kumar Dev by virtue of a Nirupan Deed dated 26.01.1970. Subsequently Manoj Kumar transferred the entire land in plot no. 154 to the defendants by a registered deed of sale dated 27.02.2001 and he also transferred 1 acre 12 decimal of land in plot no. 155/440 in favour of defendants. It is also not in dispute that on 11.06.2002, the defendants transferred 50 ½ decimal of land in plot no. 155/440 to the present plaintiff by way of registered sale deed.

15. Now the plaintiff's claim that there is a 'Barampath' (passage for egress and ingress) for entering into her land in suit plot no. 155/440 and said path is the only way for egress and ingress to her portion of land in suit plot no. 155/440 from the public road and they have acquired easement of necessity and also acquired interest over the said "baramPath"

mentioned in 'ka-1' schedule to the plaint by using the same, for last more than 12 years. However such contention has been denied by the defendants referring it as their private passage. At the instance of both the parties, two local inspection commissions were also held to bring the topography of the suit property before the court.

16. On perusal of the schedule to the plaint, it appears that plaintiff has prayed for declaration of his title in "ka" schedule suit property over plot no. 155/440 and also prayed for declaration of their right, title, interest over said "ka-1" schedule 'barampath' allegedly being only path for ingress and egress, being user of the same for over 12 years along with prayer for injunction. Defendant in their written statement in paragraph 40 specifically stated that the lands in and around suit plot was originally wetlands and only paddy cultivation was possible and as such the question of usage of suit passage by plaintiff or her predecessor or of acquisition of any right over the suit passage does not arise at all. Moreover in the eastern side of said plot no. 155/440, the defendant no. 1 and 3 had filled up and developed a portion of land to make it cultivable. Non- suited plot no. 155 and 152 in the eastern side of plot no. 155/440 was also owned by Harihar Dev and therefore, passage through defendants' land cannot be acquired through necessity and if there truly existed any such pathway, that ought to have been recited in the purchase deed of plaintiff. In the absence of any such recital in the connected deeds, plaintiff cannot claim any right over "ka-1" schedule suit passage.

17. It appears that the plaintiff filed the instant suit on 20.02.2020. He thereafter prayed for local inspection commission which was allowed by the

trial court and a local inspection commission was held on 13.09.2020 over the suit plot by advocate Utpal Biswas who submitted the topography of the suit property in his point no. 'kha' 'Ga' and 'Gha' as follow:-

“On point no. KHA

That on eastern side of the suit plot 154 there is a Govt. path made with Concrete. I have showed the same in my rough hand sketch Map.

On Point No. GA

On plot No. 154 there is a vegetable cultivation field. On its northern boundary there is fencing made with bamboo and splited bamboos etc. And on the north of that fencing there is a Barmapath which meets with the Govt. Concrete path way situated on the eastern side. There is also a drain at the extreme north of the suit plot no:154.

That the north eastern part of the suit plot n: 154/440 there is a vegetable cultivation field and the north western portion of the same is low land used for cultivation of crops and the south eastern is KALA and 'JALJOMI'.

On point No. GHA

There is a Barampath situated on the north eastern part of plot no. 155/440 and 154. That from the north western cultivating field or suit plot No” 155/440 one can access to the Govt. Path on plot 122 through the said 'BARAMPATH'.

The said Barampath is mainly muddy path but somewhere of it there are some brick bats, etc.

The said path way is about 110 feet long from eastern side to west. And the same is about 3 feet broad on north to south.

There is also pucca drain on the north of the said BARAM Path'. And on its southern side there is fencing of Bamboos and splited bamboos.

The northern end of the Baram Path is open and connected with the Govt. path but the western end is obstructed by keeping some Bamboos, splited bamboos for which it is impossible to reached to the north Western cultivating land of suit plot no:155/440.”

18. Be it mentioned that said local inspection commission was held in presence of both the parties as appearing from report and learned commissioner has also specifically noted that both the parties identified suit property with boundary and admitted it as correct. The plaintiff and defendant and/or their representative also put their signature on the field note prepared by the commissioner and they never raised any objection against the field note. Therefore, said topography of the suit property as drawn by the commissioner is the earliest topography after institution of the suit and in the absence of any other evidence, that can be taken as the topography existed at the time of filing of the suit, which in sum and

substance is that, there is a “Barampath” situated on the north eastern part of plot no. 155/440 and 154 and that from the north western cultivating field i.e. suit plot no. 155/440, one can access to the government path on plot no. 122 through the said Barampath. The northern end of barampath is open and connected with government concrete pathway but the western end is obstructed by keeping some bamboo, splited bamboo for which it is impossible to reach to the north-western cultivating land of suit plot no. 155/440.

19. It also appears that subsequently one more local inspection commission was held at the instance of defendants on 12.08.2023 i.e. about three years after the first inspection, where commissioner noted that in the northern side of the suit land there is a passage to collect the vegetables but said passage does not extend till the western end of the plaintiff’s land. Be it mentioned that said inspection was conducted only in presence of defendant as plaintiff was not present, during inspection, though commissioner noted that he served notice upon both the parties.

20. Therefore, both the report discloses that though there is a barampath but extreme western end of the barampath is not open in order to reach plaintiff’s portion of land and defendant’s claim is that it is their private pathway for plucking vegetables. According to first commissioner’s report western end of said passage is obstructed by bamboo fencing and as per second report said barampath in the northern side of the suit plot does not extend till extreme western end to reach plaintiffs land.

21. In the above scenario the trial court held that plaintiff had failed to produce any document, which can show that the passage marked “P” strip

of Land was upto the plaintiff's "A" marked land but again defendant had also failed to show that there exists any alternative path for the plaintiff to use his "A" and "A1" strip of land, which raises prima facie case in favour of plaintiff for adjudication and since plaintiff has a legal right over the suit plot and considering the balance of convenience and the balance of inconvenience, he directed both plaintiff and defendant to maintain status quo, to the nature character and respective possession over the "ka" schedule property to the plaintiff, which is plot no. 155/450 though he has not stated anything specifically about the portion of "ka-1" schedule which is the suit passage and the usage of which is the main subject matter of controversy between the parties.

22. When the matter went to the appellate court, learned Judge virtually granted the entire relief in the suit as quoted above though he made specific observation that a question arises in his mind as to how the land in question i.e. the land of plaintiff in suit plot no. 155/450 was being used for the purpose of cultivation, prior to transfer of said land in favour of the plaintiff but he observed that such question can only be decided after taking evidence from the parties.

23. Therefore, one thing is clear that though both the commission report depicted topography of the suit property that western end is not open to reach plaintiff's land, but court below directed to maintain status quo erroneously stating that the pathway leads to the land of plaintiff from public road, ignoring topography of suit passage as reflected in commission's report. Therefore though the courts below are in favour of

directing both the parties to maintain status quo in respect of nature, character and possession of the suit pathway, but without considering what was the nature, character or possession of the suit passage at the time of filing of the suit.

24. While setting aside the order of the trial court, the court below specifically restrained the defendants to prevent the plaintiff from using the “ka-1” schedule pathway for the purpose of her cultivation and also made it clear that the plaintiff shall use the same narrow pathway only for the purpose of cultivation in respect of her land in suit plot no. 155/440, inspite of the fact that the earliest commission report discloses that though the northern end of the suit passage is open and connected with the government path but the western end is not open and has been fenced by splited bamboo and for which it is impossible to reach to the north-western cultivating land of the suit plot no. 155/440 through that pathway.

25. Therefore, in order to get a restraining order in the form of injunction, plaintiff was under an obligation to show that he was all along in possession of the suit passage, or plaintiff could have shown that he was dispossessed from using the pathway. Such findings are lacking and therefore, the court below had acted without jurisdiction in passing the aforesaid restraint order. The court below did not even consider whether there was any proof that the plaintiff was forcibly dispossessed in using the said pathway by the defendants.

26. I find that the approach made by the appellate court is not the approach which was called for in entertaining a claim of this nature put forward by the plaintiff and hence the order is also vitiated by an erroneous

approach to the question falling for decision, specially when he is of the definite opinion that how the land of the plaintiff in suit plot no. 155 /440 was being used for the purpose of cultivation prior to transfer of said land in favour of plaintiff, can only be decided after taking evidence from the parties. In exercise of the appellate jurisdiction, the court below is duty bound to consider whether the order which is going to be passed is supported by necessary findings. Prima facie there is no material to indicate that at the time of or before filing of the suit, plaintiff was in fact dispossessed by the defendant in using the “ka-1” schedule pathway.

27. One more aspect, involved in the suit is that plot no. 155/440 is unpartitioned property. The question of Legality and validity of the claim of a co-sharer about acquisition of right, title and interest either by way of adverse possession or by way of easement of necessity is also involved. From the order of the court below it is not possible to come to the conclusion that on a proper advertence to the relevant material, prima facie clear finding had been rendered by that court on this aspects, when the question as to whether plaintiff has become landlocked or not can only be decided on the basis of evidence.

28. Therefore, prima facie I find that the plaintiff’s claim over the “ka-1” schedule passage or acquisition of right, title and interest over the said property remains to be proved in the suit.

29. However since primary object of granting temporary injunction is for the protection and preservation of the property, the orders of the courts below are liable to be modified to the extent that both the parties will maintain status quo in respect of nature, character and possession of the

“ka-1” schedule suit passage till disposal of the suit in terms of the nature, character and possession thereof as reflected in point no. “Gha” of the commissioners report dated 08.01.2021 i.e. *‘the northern end of barampath is open and connected with the Govt. Path but the western end is obstructed by keeping some bamboos splited bamboos for which it is impossible to reach to the north western cultivating land of suit plot no. 155/ 440.’*

30. It is also to be mentioned that the parties shall not create any third party interest in respect of the said disputed “ka-1” schedule passage pending disposal of the suit. Considering the nature of the suit and the question involved, I would request the Trial Court to try and dispose of the suit expeditiously. However the trial court shall dispose of the suit in accordance with law without being influenced by any observation made herein. Be it mentioned that the observations made herein are only for the purpose of disposal of the temporary injunction application and not on the merit of the suit.

31. C.O 3777 of 2024 thus stands disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)