

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 3807 of 2024

Shoumik De

VERSUS

Utsav Dey & Anr.

With

CAN 1 of 2024

With

CAN 2 of 2025

With

CAN 3 of 2025

With

CAN 4 of 2025

With

CAN 5 of 2025

With

CAN 6 of 2025

With

CAN 7 of 2026

With

CAN 8 of 2026

For the petitioner:

Mr. Anupam Bhattacharya, Adv.
Mr. A.R. Hafiz, Adv.

For the opposite parties:

Mr. Krishna Das Poddar, Adv.
Ms. Mandira Barman, Adv.

Last Heard on: February 03, 2026

Judgment on: May 22, 2026

Biswaroop Chowdhury, J:

The petitioner before this Court is a plaintiff in a suit for partition declaration and injunction and is aggrieved by the order dated 03/10/2024 passed by Learned Additional District Judge 2nd Court Sealdah South 24 Parganas in Misc Appeal 61 of 2024 whereby Learned Judge refused to allow the prayer for ad-interim injunction.

The case of the petitioner/plaintiff before the Learned Trial Court may be summed up thus:-

The petitioner/plaintiff and the defendants are the joint Shebaitis of the schedule 'A' and Schedule 'B' property though the opposite parties/defendants are not staying within the State of West Bengal as it appears from the address of the opposite parties. The defendants have not been performing the Shebaitship rights rather the plaintiff is continuing to perform his sebaity rights inherited from the predecessor. However for the difficulties of such joint enjoyment of Seva Puja and the Sebaitship Rights thereby the Petitioner/appellant/plaintiff on several occasion requested to settle the matter but the opposite parties/respondents deliberately and intentionally avoided for

such solution thereby the petitioner sent a notice on 05-08-2024 through speed post for amicable settlement as to the disputes between the parties and the Defendants did not reply the notice dated 05-08-2024. It was further contended that injunction is very much required for the purpose of protection of the Schedule 'A' and Schedule 'B' property. Further the injunction is very much required for the purpose of protection of the Schedule 'A' and Schedule 'B' property as well as the rights of shebaitship as inherited from the predecessor-in-interest and thus the order of injunction is to be passed restraining the opposite parties defendants and their men and agents from transferring letting out, changing the nature and character of the suit/schedule property and also from encumbering them and from creating any third party interest to the aforesaid schedule property. It is also contended that if injunction is not granted the petitioner will suffer irreparable loss and injury and such loss cannot be compensated in any money value even the right of shebaitship will be hampered and the Seva Puja of the deity will be also hampered which is continuing since the inception of the predecessors right title interest and possession over the schedule properties.

The ground for rejection of the prayer for ad-interim injunction by the Learned Trial Court was that the plaintiff has not filed original family settlement nor has filed the death certificates of their predecessors, and has filed Xerox documents.

The appellate Court while dismissing the prayer for ad-interim order was pleased to observe as follows:-

Perused the deed of partition dated 08-06-1904 relied by the appellant/plaintiff. There are three schedules in the deed:-

Schedule A – (KA)-represents the entire partible property.

Schedule B-(KHA)-Allotted portion of Nagendra Nath Dey.

Schedule – C (GA)-allotted portion of Kartick Ch. Dey. and Smt. Sushila Dasi.

It appears that Court should be concerned with the schedule B (KHA) of the deed of partition which was allotted portion of Nagendra Nath Dey. It further appears that total of B (Kha) property measures 8 Cottah 13 chittacks, 18 sft. at 7 Gopal Chandra Lane was stated to be within the limits of Jorasanko PS.

The properties described in the instant appeal being schedule-A measures 8 bighas on Dr. Suresh Chandra Banerjee Road under the Limits of Beliaghata P.S. and the schedule-B property of 6. Gopal Chadra Lane is situated at PS Bowbazar.

Neither the A schedule nor B- Schedule (Kha)-Allotted portion of Nagendra Nath Dey in the partition deed. In such circumstances a very weak prima facie case seems to have been presented by the appellant.

In the absence of a good prima-facie case no-ad-interim order can be granted.'

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite parties. Perused the petition filed and materials on record.

Learned Advocate for the appellant submits that both Learned Trial Court and Learned Appellate Court erred in not granting the ad-interim order of injunction.

Learned Advocate further submits that according to the said settlement Deed Kartick Chandra Dey and Sushila Dasi ie. the second part therein entitled to get the 'Ga' Schedule which comprised of the Schedule 'A' and Schedule 'B' to the plaint of the present suit being Title Suit No. 202 of 2024.

Learned Advocate also submits that as there are no male descendants of the said Kartick Chandra Dey and Sushila Dasi, the male heirs of Nagendra Nath Dey herein the petitioner and the opposite parties are entitled to get 'Ga' Schedule to the said settlement Deed. i.e. schedule 'A' and Schedule 'B' to the plaint of Title Suit No-202 of 2024.

Learned Advocate relies upon the following Judicial decisions:-

Gopal Chunder Bose VS Kartick Chunder Dey.

Reported in (1902) ILR-29CAL 716.

Shri Sudhakar Verma VS Sh. Rakesh Kumar Arora.

Reported in AIR-2004 Delhi-369.

Anand Prasad Agarwalla VS Tarkeshwar Prasad.

Reported in AIR-2001. S.C. 2367.

Smt. Reba Rani Bal and Anr. VS Sri Malay Krishna Bal and ors.

C.O. 2320 of 2016.

(High Court at Calcutta).

Swapan Malakar VS Puspa Majumder and ors.

CO. 968 of 2022.

(High Court at Calcutta)

Learned Advocate for the opposite parties submits that the opposite parties are not in a position to answer regarding the nature of injunction sought for by the petitioner/plaintiff before the Learned Courts.

Learned Advocate further submits that both the Learned Courts agreed on the findings of facts thus no interference be made unless the findings are perverse.

Learned Advocate also submits that the Learned Xth Bench City Civil Court Calcutta has decided the issue of Sebitship in suit being No-982 of 1997 and the instant suit is barred by resjudicata.

Learned Advocate relies upon the following Judicial Decision:-

Ajay Singh VS Khacheru and others.

Reported in (2025) 3 SCC. 266.

Before proceeding to decide the material in issue it is necessary to consider the provisions contained in Order XXXIX. Rule 1 of Code of Civil Procedure.

Order XXXIX Rule 1 provides as follows:

1. Cases in which temporary injunction may be granted-1) Where in a suit it is proved by affidavit or otherwise.
 - a) that any property in dispute in a suit is in danger or being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or.
 - b) that the defendant threatens or intends to remove or dispose of his property with a view to [defrauding] his creditors.
 - c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting damaging alienation sale removal or disposition of the property [or dispossession of the plaintiff or otherwise causing injury to the plaintiff in

relation to any property in dispute in the suit] as the Court thinks fit until the disposal of the suit or until further orders.

Where an injunction is sought to be granted ex-parte the Court shall record the reasons for its opinion that the object of granting injunction would be defeated by delay.

It is well settled that the factors to be taken into consideration while granting ex-parte injunction is prima facie case, balance of convenience and irreparable injury.

In the case of Anand Prasad Agarwalla (supra) the Hon'ble Court observed that it may not be appropriate for any Court to hold mini trial at the stage of grant of temporary injunction.

In the case of Shri Sudhakar Verma (supra) the Hon'ble Court while considering the issue of temporary injunction in a partition suit was pleased to observe that in case the parties are not directed to maintain status-quo till the disposal of the suit in regard to the two suit properties irreparable loss may be caused to the plaintiff. The balance of convenience is also more in favour of preserving the status quo in respect of two properties till the disposal of suit.'

With regard to the observation of the Learned Appellate Court that there is no prima facie case it appears from the plain reading of the plaint that schedule 'Ga' of the terms of settlement specifies the property which are mentioned in Schedule 'A' and Schedule 'B'. It is the case of the plaintiff that

Ga schedule property as per the settlement devolved upon Kartick Chandra Dey and Sushila Dasi, and not Nagendra Nath Dey through whom plaintiff and the defendants claim. Thus the suit property has not devolved upon the plaintiff and defendant. It is only in this revisional application the petitioners/plaintiff has stated that as there are no male descendants of the said Kartick Chandra Dey and Sushila Dasi the male heirs of Nagendra Nath De the petitioner and opposite parties are entitled to get Ga Schedule of the settlement Deed i.e. Schedule 'A' and Schedule 'B' to the plaint.

Thus this Court does not find any error with regard to the observation made by the Learned Appellate Court regarding plaintiff not having Prima facie case.

However considering the nature of the suit and the fact suit property belongs to Deities in the interest of justice and to prevent the abuse of the process of Court plaintiff/petitioner should be given an opportunity to amend the plaint and take such other steps necessary under law, before Trial Court and limited interim protection should be given in the meantime. Further as different developments have taken place during the pendency of this application, and complaints were also lodged before Police Authority regarding suit property this Court is of the view that as the property belongs to deities and Court is the Guardian of the Dieties in order to protect the interest of the Dieties and for regular performance of Seba-Puja it is necessary to appoint special officer to conduct an enquiry and submit a report before Learned Trial

Court for further consideration of injunction application and other interim reliefs.

Thus Mr. Dwariknath Mukherjee Learned Advocate ph no. 8116555476 and Mr. Prosenjit Chatterjee Learned Advocate ph no. 8420443716 are appointed Joint Special Officers. Learned Special Officers upon visiting the suit property shall ascertain by whom daily seba pujas are performed, and secondly who are in occupation of the suit property. Upon conducting the Enquiry Learned Special Officers shall submit report before the Learned Trial Court for necessary decision. Learned Special Officer shall conduct enquiry upon notice to the parties and their Learned Advocates within 3 weeks from date of communication of this Order and submit report within one week from date of inspection. Learned Special Officers are entitled to remuneration of 700 GMeach to be paid by the petitioner. The point with regard to res-judicata may be raised by the defendant in his written objection before Trial Court.

Hence this application under Article 227 of the Constitution Stands disposed. The matter is remitted to the Learned Trial Court to consider and decide the application for injunction filed in Title Suit No. 202 of 2024 in accordance with law upon giving the parties an opportunity of being heard. Necessary steps must be taken by the plaintiff/petitioner as observed above on the next date fixed before the Learned Trial Court and the defendant/opposite parties will be at liberty to file written objection to the injunction application. On the written objection being filed and on the report of Learned Special

Officers submitted Learned Trial Court shall decide the injunction application. The ad-interim order of injunction restraining the defendants from alienating, disposing or parting with possession of the suit property and from changing the nature and character of suit property shall remain for a period of 6 weeks from next date fixed before Trial Court. In the event application for injunction is not disposed within 6 weeks Learned Trial Court may extend the ad-interim order. Upon considering the report of Special Officers in the event Learned Trial Court is of the view further enquiry is necessary the Learned Special Officers may be sent for further enquiry and further remuneration may be fixed by Learned Trial Court. In the event Learned Trial Court is of the view that further enquiry is not necessary the special officers shall be discharged. On being discharged Learned Special Officers will be entitled to a final remuneration of 100 GM each. As the injunction application is to be decided by the Learned Trial Court no fruitful purpose will be served by keeping the Appeal pending before Learned Additional District Judge 2nd Court Sealdah South 24 Parganas being Misc Appeal 61 of 2024. Thus the said appeal is treated to be disposed.

It is however made clear that this Court has not gone into the merits of the suit and all points will be kept open.

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

(Biswaroop Chowdhury, J.)