

26.02.2026

A.Bhar

SL. No. 1

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELALTE SIDE

SA 58 OF 2025

With

IA No.: CAN/2/2025, CAN/3/2025

Sujoy Parui And Ors.

-Versus-

Kaushalya Sarkar And Ors.

Mr. Satyam Mukherjee,
Mr. Purnendu Shekhar Ghosh,
Mr. Saibal Rakshit,

...for the appellants.

Mr. Susenjit Banik,
Mr. Soumyajit Bhatta,
Mr. Prasenjit De,

....for the Opposite Party No. 1 to 7.

This is an application under Order XXXIX.
Rule 4 of the Code of Civil Procedure filed by the
Respondents/plaintiffs with a prayer to direct the
appellants/opposite parties to remove the bamboo and
wood material piled up in front of the suit property to
enable petitioners to get ingress and egress smoothly
to their residential house thereby setting aside and/or
discharging and/or varying the order of injunction
dated April 16, 2025 passed by the Hon'ble Division
Bench presided over by His Lordship the Hon'ble
Justice Sabyasachi Bhattacharya in CAN. No-1/2023.
It is the contention of the petitioners that the Hon'ble
Division Bench by order dated April 16, 2025 was

pleased to admit the appeal and direct the parties to maintain Status Quo as regards possession nature and character in respect of the suit property and further directed that the parties shall remain restrained from creating any third party interest in respect of the said property till disposal of the said application.

It is further contended that the said opposite parties after the dismissal of the said title appeal by the Learned 8th Court of Additional District Judge at Barasat on September 29, 2023 with the help of their men and agents have forcefully entered into the suit schedule property on April 8, 2024 and piled up bamboo and woods in front of the suit scheduled land to obstruct the ingress and egress of the petitioners.

It is also contended that one written complaint was lodged with the Deganga Police Station but due to the existence of interim order the Police Authority could not remove the obstruction.

The Appellants filed affidavit in opposition to the petition denying the allegations contained therein.

On 01-12-2025 an order was passed appointing a special officer to enquire into the allegations made by the respondents/plaintiffs. It was observed and directed as follows.

The Learned Special Officer shall visit the suit property and verify as to whether the ingress

and egress of the respondent nos. 1 to 7 is being obstructed. Further the Learned Special Officer shall take necessary photographs of the suit property and the area where the obstruction is being made and after ascertaining the same as to whether there is any other alternative of ingress and egress of the respondent no. 1 to 7. The Learned Special Officer shall upon notice to all the parties and their advocates cause the enquiry. Such enquiry must be caused within two weeks from the date of communication of this order and a report should be submitted on or before 07-01-2026.'

Pursuant to the Order dated 01-12-2025 the Learned Special Officer conducted the enquiry upon notice and submitted report with certain observations.

The Learned Special Officer has observed that on enquiry of the suit property he found that a single storied building lying and situated about 100 feet away from the main road connected by the Kuchha road/pathway and there is no boundary wall in front of the suit property. He found a ruinous Ambassador Car is standing and in its left hand side there is a pathway which is measuring about 3 feet wide approximately through which the respondent nos. 1 to 7 used to ingress and egress. There is no obstruction of their ingress and egress. He had not found any bamboo and wood materials piled up in

front of the suit property. He also found that there is no alternative ingress and egress in the suit property save and except the Kuchha road/pathway starting from Shiva Temple on the left hand side of the main road which is leading to the suit property.

The plaintiffs/respondents took exception to the report of the Special Officer. It is contended that Learned Special Officer, considered said R.S. Dag No.887 as the suit property which can be revealed from the entire report as he has said that there is Kuchha road/pathway connecting the suit property with the metal pucca road and he has also stated that the suit property is about more or less 100 feet away from the main pucca road and there is a single storied building lying and situated about 100 feet away from the main road connected by the said village Kuchha road/pathway and there is no boundary wall in front of the suit property; whereas in the said application being CAN-No-3 of 2025 it has been specifically mentioned that the suit schedule property in R.S. plot No-886 which is measuring about 4 decimal of land and immediately western side of the said land the main road situates. The R.S. Plot No. 886 is the only entrance and exit point of the petitioners to the Plot no-887 where the residential building of the petitioners situates as such questions of raising boundary wall in between the two properties cannot arise. It is also

contended that the Learned Special Officer absolutely failed to consider that the said 3 feet wide path way cannot be the appropriate passage way for ingress and egress of an Ambassador car. The Learned Special Officer has taken several photographs of the said 3 feet passage but failed to consider the other piled up bamboos and wood materials situated just beside the said 3 feet narrow pathway as it appears in the annexed photographs.

The appellants have filed opposition to the exception submitted by the plaintiffs/respondents. It is contended by the appellants that the alleged ambassador car which is admittedly in a ruinous condition was brought in front of the residential home of the petitioners by themselves by availing one of the other two alternative paths of egress and ingress much prior to institution of the suit. Thereafter due to construction on one of the adjacent plots (not the suit plot) the said alternative paths stood obstructed and accordingly, the petitioners have not been able to move their vehicles from plot No. 887. The appellants have denied that the suit plot No. 886 was at all availed by the Petitioners/Respondents No. 1 to 7 or that the same was at all obstructed by the Appellants/Opposite Party No. 1 to 6.

From specific two photographs appearing in the page nos. 49 and 50 in the said report it will

transpire that beside the said 3 feet narrow passage bamboo and other wood materials and some plastics has been piled up in the said R.S. Plot No. 886 i.e. the suit property. The basic contention of the petitioners was that immediately after being lost in the title appeal on April 08, 2024, the appellants/opposite parties with the help of their men and agents have forcefully entered into the suit scheduled property and piled up bamboo and woods in the suit schedule land to obstruct the ingress and egress of the petitioners. As such the petitioner herein has not only referred the access to their residential house through the suit property by feet but also by car which they were unable to ply in the road on and from the date when such obstruction was created.

Upon considering the material in issue and upon hearing the Learned Advocates this Court is of the view that as the Learned Special Officer was directed to enquire as to whether the ingress and egress of the respondent no. 1 to 7 is being obstructed the Learned Special Officer observed in the negative. However with regard to the movement of the ambassador car as it is observed that the car is in a ruinous condition and is stranded in the place from 2014, and upon perusing the picture of the car this Court is of the view that at this stage that the car is not in a moving condition no direction is required to

clear the materials for movement of the car. However as it appears from photographs that many wooden and bamboo articles are staged at the suit plot to which the plaintiffs has objection, and as the plaintiffs/respondents have obtained decree with regard to the suit plot the plaintiffs/respondents have right to use the suit plot freely without interference by defendants. As it is the case of the plaintiffs that the obstruction is made after the order passed by the appellate Court at this stage it would be just and reasonable to permit the defendants appellants to keep the bamboo and wooden articles where it is lying subject to the deposit of costs of Rs. 10,000/-. This deposit is a security amount subject to the result of the appeal. In the event appeal succeeds the defendants/appellants will be permitted to take back the deposit and in the event appeal fails plaintiffs/respondents will be paid the security deposit.

Hence application CAN-3 of 2025 stands disposed. The defendants/appellants are permitted to keep the bamboo and wooden articles in the suit plot which is lying at present, subject to the deposit of costs of Rs. 10,000/- before the Registrar General High Court Calcutta. In the event appeal succeeds the defendants/appellants will be permitted to withdraw the security deposit. In the event appeal fails plaintiffs/respondents will get the security deposit and

articles in suit plot will have to be removed. The Learned Special Officer stands discharged. Let a final remuneration of 100 G.M. be paid to Learned Special Officer by the respondents. Costs to be deposited within 2 weeks.

(Biswaroop Chowdhury, J.)