

Form No.J(2)

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

Present :

**The Hon'ble Justice Arindam Mukherjee**

**CO/40/2026  
WITH  
CAN/2/2026**

**SRI TARANI KANTA ROY & ORS.  
Versus  
SRI DILIP KUMAR ROY & ORS.**

For the petitioners :Mr. Gopal Sah

For the Opposite Parties :Mr. Momenur Rahman  
Mr. Bikash Singha

Heard on : 12.05.2026.

**Judgment on : 12.05.2026.**

**Arindam Mukherjee, J:**

1. The exception to the report of the Special Officer appointed by the order dated 23<sup>rd</sup> March, 2026 taken by the petitioners (defendant in the suit) filed in Court today is taken on record. A copy of such exception has been served on the opposite parties (plaintiffs in the suit).
2. The civil revisional application arises out of an order dated 6<sup>th</sup> December, 2025 by which an application filed by the plaintiffs under Section 151 of the Code of Civil Procedure, 1908 (in short CPC) has been allowed, the operative portion whereof is set out hereunder:-

*“That the petition under Section 151 dated 20.11.2025 Filed by the plaintiff for harvesting of the paddy crop is allowed on contest. However, this order shall be subject to the final judgment of this Court in respect of title and possession. Fix 09.03.2026 for hearing of the petition for temporary injunction on contest”.*

3. Being aggrieved by the said order dated 6<sup>th</sup> December, 2025, this application has been filed by the defendants in the suit.
4. On a perusal of the records and considering the submission made by the parties, the dispute in brief which led to the filing of the said application may be summarized as follows:-

- i) The plaintiffs and the defendants have claimed title and possession of the suit property which is an agricultural land which appears to be contiguous but under different Khatian numbers.
- ii) The plaintiffs say that by virtue of inheritance, the plaintiffs have become the owner of the suit property. The predecessor-in-interest of the plaintiffs was the original recorded owner of the suit property. The plaintiffs have produced the R.S. Khatian records to show that the predecessor-in-interest of the plaintiffs was the recorded owner against R.S. Khatian No. 741/9. It is also the case of the plaintiffs that their predecessor-in-interest was in possession of the suit property, pursuant thereto the plaintiffs were and are still in possession of the suit property and have been cultivating the said agricultural land. The defendants (petitioners herein) has no right, title interest over the suit property and were never in possession of any part or portion thereof.

- iii) Since the defendants attempted to interfere with the possession and cultivation of the suit property, the suit was filed only for injunction without seeking any declaratory relief.
- iv) On the other hand, it is the case of the defendants that the name of the father of the defendants was recorded in the R.S. Khatian No. 741/36 which admittedly is different from the Khatian number of the plaintiffs' property.
- v) It is the further case of the defendants that the defendants are presently in possession of the suit property and have been cultivating the same.
- vi) Initially in an application under Order XXXIX Rule 1 & 2 of CPC filed by the plaintiffs (opposite parties), the following order dated 20<sup>th</sup> January, 2024 was passed in the presence of the defendants (petitioners herein):-

*“The defendants and their men and agents are hereby restrained from causing interference in the peaceful acts of possession of the plaintiffs and forbidding them from encroaching any portion of the suit property forcibly till disposal of the suit.”*

This order was passed in the presence of the defendants (petitioners herein).

- vii) The defendants preferred an appeal against the said order dated 20<sup>th</sup> January, 2024.
- viii) In the said appeal being Misc. Appeal No.14 of 2024 on 16<sup>th</sup> July, 2024 the following order was passed:-

*“In view of that matter, the impugned order no.06, dated 20.01.2024 passed by the learned Civil Judge, Junior Division, Jalpaiguri in Title Suit No.655 of 2023 be stayed on condition that the parties herein shall maintain status quo in respect of nature, character and possession of the suit property till next date.”*

- ix) The appeal was ultimately disposed of by an order dated 16<sup>th</sup> July, 2025. The operative portion of the said order is as follows:-

*“that the instant Miscellaneous Appeal be and the same is allowed on contest against the respondents/plaintiffs but without any order as to costs.*

*Order No.06 dated 20.01.2024 passed by the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Jalpaiguri, in Title Suit No.655/2023 is hereby set aside.*

*Injunction application is revived and remanded back to the Ld. Trial Court to rehear the same along with written objection filed by the defendants after giving opportunities of hearing to both the sides and to pass a reasoned order in accordance with law within four weeks from the date of receipt of this order. In the meantime, parties are directed to maintain status quo in respect of nature and character of the suit property till disposal of the injunction application by the Ld. Trial Court.*

*However, I make it clear that all points are left open before the Ld. Trial Court while considering the injunction application in the light of the documentary proof of the respective parties and the observation made herein above are limited to hearing and adjudication of the instant Appeal and it is not binding upon the Ld. Trial Court while hearing of the injunction application afresh. Trial Court shall proceed in accordance with law without being influenced by the above observation”.*

- x) The plaintiffs thereafter filed the application under Section 151 of CPC for an order to harvest the crop cultivated in the suit property by the plaintiffs which was disposed of by passing the order impugned.

**Submission by the petitioners:**

5. a) The main grievance of the petitioners (defendants in the suit) is that the learned Trial Judge while passing the order impugned dated 6<sup>th</sup> December, 2025 did not consider the order of stay passed by the

First Appellate Court in the order dated 16<sup>th</sup> July, 2024 by which the order of injunction dated 20<sup>th</sup> January, 2024 was stayed.

b) It is also the case of the petitioners that the question of cultivation in the suit property by the plaintiffs (opposite parties) cannot and does not arise as the order restraining the defendants (petitioners herein) had remained stayed from 16<sup>th</sup> July, 2024 which was ultimately set aside by the order dated 16<sup>th</sup> July, 2025. Since there was no restraint order in operation between 16<sup>th</sup> July, 2024 and 16<sup>th</sup> July, 2025, the petitioners cultivated the suit property which is wrongly claimed as cultivation by the plaintiffs.

c) This raises a question to the very basis of the order impugned which according to the petitioners is based on the presumption that the plaintiffs had cultivated the land in between the period when the stay order was in subsistence and the final order of status quo was passed in the appeal.

d) The petitioners had produced bill for purchasing seeds on 14<sup>th</sup> May, 2025 while the bill for purchasing seeds produced by the plaintiffs (opposite parties) is dated 20<sup>th</sup> June, 2025.

e) The petitioners say that the learned Trial Judge erred in accepting the fact that the plaintiffs (opposite parties) had cultivated the land, the prima facie proof is their purchase of seed and, as such, allowed the plaintiffs to harvest the crop on a wrong presumption that the plaintiffs are in possession of the suit property thereby ignoring the claimed and supportive documents produced by the petitioners (defendants).

f) It is also the case of the petitioners that the reasoning of the learned Trial Judge is flawed because the learned Judge has held that the bill produced by the plaintiffs dated 20<sup>th</sup> June, 2025 is prior to the order of the learned Appellate Court dated 16<sup>th</sup> July, 2025, without considering the fact that the order of stay was in operation since 16<sup>th</sup> July, 2024 that is much prior to 20<sup>th</sup> June, 2025. Thus, the presumption that the bill produced by the defendants dated 14<sup>th</sup> May, 2025 when the order restraining the defendants from interfering with the peaceful possession of the plaintiffs was in force and only stood modified pursuant to the final order dated 16<sup>th</sup> July, 2025 is not only incorrect but also contrary to records.

g) It is also the case of the petitioners that the plaintiffs could not have cultivated the land in view of the stay order dated 16<sup>th</sup> July, 2024.

**Submission by the opposite parties:**

6. (i) On behalf of the opposite parties (plaintiffs) it is submitted that the plaintiffs were all along in possession of the suit property and there was no embargo on the plaintiffs cultivating the suit property. The learned Court had, on being prima facie satisfied with the documents produced by the plaintiffs, passed the order dated 20<sup>th</sup> January, 2024. This order was only stayed by the order dated 16<sup>th</sup> July, 2024, which means that the order restraining the defendants interfering with the possession of the plaintiffs so far as the suit property is concerned was kept in abeyance. The order of injunction on being stayed did not give the petitioners (defendants) to cultivate

the suit property. The Appeal Court also did not express even any prima facie view that the plaintiffs are not the owner or are not in possession of the suit property. The Appeal Court by the final order dated 16<sup>th</sup> July, 2025 has only directed the parties to maintain a status quo.

(ii) Prior to the order dated 16<sup>th</sup> July, 2025, the plaintiffs have started the cultivation and, as such, was permitted to harvest the crop in December 2025. The crop has already been harvested and, as such, this revisional application has become infructuous with the passage of time.

**Analysis and Conclusion:**

7. Upon hearing the parties, I find that the learned Trial Court has clearly and unambiguously stated in the order impugned that the question of prima facie possession cannot be decided at that stage and the same was left open to be determined while hearing the petition for temporary injunction on contest.
8. The Trial Court, therefore, has not expressed any prima facie opinion far less any opinion regarding the possession which is the pivotal point of the petitioners' (defendants') argument. The claim of the defendants to be in possession of the suit property is, therefor, yet to be decided. It should not also be lost sight of that the defendants (petitioners herein) did not file the suit claiming infringement of right with regard to their property by the plaintiffs (opposite parties). On a prima facie scrutiny the Khatian number of the land claimed to be owned by the plaintiffs is different from that

claimed by the defendants. It is also to be noticed that stay of the order dated 20<sup>th</sup> January, 2025 by the Appeal Court's order dated 16<sup>th</sup> July, 2025 did not permit the defendants to cultivate the suit property.

9. The defendants have also not been able to demonstrate before the Trial Court through the opposition to the application filed under Section 151 of the CPC filed by the plaintiffs (opposite parties) wherefrom the order impugned emanates that they were in possession of the suit property on or before 20<sup>th</sup> January, 2025 or before 16<sup>th</sup> July, 2025 to even prima facie demonstrate that they had the right to cultivate the suit property. The petitioners have also not produced any photograph to prima facie show that the petitioners had cultivated the suit property. The petitioners have not also produced any corroborating documents like tractor hiring bill or hiring of hand-tiller etc. to show that they have cultivated the property. The petitioners have also not produced any document to show the source of water used for cultivating the suit property. In absence of all these documents, it cannot be held that the petitioners had cultivated the land, the crop whereof was allowed to be harvested by the order impugned.
10. The argument of the petitioners that the plaintiffs also did not produce any such document cannot also be accepted at this stage as the burden of proof would have shifted on the plaintiffs (opposite parties) had the petitioners (defendants) produced any prima facie document apart from the purchase of the seeds dated 14<sup>th</sup> May,

2025 to rebut the claim of the opposite parties (plaintiffs) that they have cultivated the suit property. The plaintiffs (opposite parties) in that case were required to produce documents.

11. Neither the Appeal Court nor the Trial Court has decided on the possession of the property as yet. The petitioners (defendants) have not produced any document to show that they were in possession of the suit property and had been cultivating the same at any point of time either prior to the institution of the suit or even thereafter. The petitioners (defendants) have also not approached the Court at the first instance which would have been the ordinary course of action had the plaintiffs invaded the rights of the defendants in respect of the suit property. There is also no police complaint as to dispossession by the petitioners (defendants). There is also no complaint to the concerned BL & LRO about wrong recording of the suit property by the plaintiffs. In such situation it will be improper at this stage in the revision application to even express any prima facie view as to the possession of the suit property on the basis of the submission of the defendants that the order of status quo passed by appeal raises a cloud as to the ownership and possession of the plaintiffs (opposite parties).

12. The basis of the order impugned as contended by the petitioners (defendants) to unreasonable or passed on the basis of unfounded presentation is, therefore, not acceptable. The standing crops are perishable in nature. The petitioners (defendants) could not make any dent to the claim of the plaintiffs (opposite parties) as discussed

hereinabove. In the light of the discussion as aforesaid, I do not find any illegality or material irregularity far less perversity in the order impugned. The learned Trial Court, therefore, has rightly allowed the plaintiffs to harvest.

13. I am, therefore, not inclined to interfere with the order impugned.

The revisional application fails.

14. The interim order passed in the revisional application including the appointment of Special Officer stands vacated and/or discharged.

**(Arindam Mukherjee, J.)**