IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 1701 of 2023

Messers Dimpal Properties Pvt. Ltd.

VERSUS

Ram Krishna Vivekananda Mission

For the Petitioner:	Mr. Sudhasatva Banerjee, Adv. Ms. Arunima Lala, Adv.
For the Opposite Party:	Mr. Vivekananda Bose, Adv. Mr. Jaydeb Ghorai, Adv. Mr. Diptesh Ghorai, Adv.

Last Heard on: September 18, 2025

Judgment on: November 10, 2025

Biswaroop Chowdhury,J:

The petitioner before this Court is the plaintiff in a suit for declaration and permanent injunction and is aggrieved by the Order dated 14th February 2023 passed by the Learned Additional District Judge 3rd Court Barrackpore in Miscellaneous Appeal No-5 of 2022 whereby the Learned Judge dismissed the appeal preferred by the petitioner/Appellant filed against the Order dated 23-03-2021 passed by Learned Civil Judge (Senior Division) 3rd Court Barasat in

T.S. no-1321 of 2015 whereby the Learned Trial Judge rejected the prayer for temporary injunction filed by the plaintiff.

The facts of the case in brief is that the plaintiff claimed that the original suit property and other non-suit properties originally owned by one Satya Charan Law. The aforesaid owner agreed to lease the 'A' schedule suit property in favour of the plaintiff. The lease deed could not be executed in due time and in the mean time the said owner created a trust on 01.04.1983 and appointed Amal Chandra Law and Chaya Law as joint trustees. A fresh approach was made to the new trustees for execution of the lease deed but instead an agreement to execute a lease was made along with which possession of the property was delivered to the plaintiff. Somehow the formal lease deed was not executed by the lessors which led the plaintiff to file a suit for specific performance of contract being T.S. No. 42 of 1985 in the Court of Ld. Assistant District Judge 10th Court Alipore. The suit was decreed and the plaintiff got the registered lease deed from the Court by putting the decree into execution. One day when the plaintiff came to see his property he found that construction materials were stocked in the plot and the defendant intended to make some construction in the entire property including his leasehold land. The plaintiff came to know from the men and agents of the defendant that the defendant has already purchased the entire properties including the suit property. The plaintiff raised objection to the acts of the defendants and thereafter filed suit before Learned Civil Judge (Junior Division) 4th Court, Sealdah but on the ground of pecuniary jurisdiction the said suit was withdrawn and was re-filed

before Learned Civil Judge Senior Division 3rd Court Barasat being T.S. 1321 of 2015. An application for temporary injunction was moved before the Learned Trial Court which was dismissed. The petitioners being aggrieved by the order passed by Learned Trial Court preferred an Appeal before the Learned Appellate Court. By order dated 14th February 2023 Learned Additional District Judge 3rd Court Barrackpore was pleased to dismiss the Appeal by observing and directing as follows:

'The next question that arises at this juncture of the suit is why the appellant is claiming an order of injunction when admittedly the appellant has no physical possession over the suit property. Ld. Advocate for the appellant submitted in Court that although the plaintiff is not in physical possession of the property but in absence of any injunction order, the respondent may create several incumbrance over the property and even if the appellant succeeds in the suit then also the appellant will not be able to enjoy the fruit of the decree. To answer such question it is pertinent to state that the claim of the appellant is based on possessory right of lease and the legality and validity of the lease is put under the scanner in the suit. Even if I assume that the appellant succeed in the suit of establishing the lease as the valid one then the plaintiff/appellant can claim physical possession over the property based on such right. Now if during pendency of the suit, the respondent encumber the property in any manner then the appellant will get protection of Section 52 of the Transfer of the Property Act ie. lis pendens and any person who becomes a party to the process of encumbrance will have its title subject to the decision of the suit.

Further all the developments made over the suit property including any future act of encumbrance will have its title subject to the decision of the suit. If the plaintiff eventually succeeds in establishing its claim of lease over the suit property and if the defendant makes any construction and transfer to any third person then such development or title of the third party will have the effect of Section 52.

Moreover any order of injunction passed in this case will effectively injunct the admitted true owner of the property at the instance of the appellant who is claiming to be the rightful lessee of the property. The appellant has not shown before the Court in any manner that they received physical possession of the property in lieu of the alleged lease deed nor could show their dispossession regarding pendency of the proceeding. This also means that granting a temporary injunction order will cause more inconscience to the respondent than the appellant which further signifies that the balance of convenience and inconvenience does not lie with the appellant.

When all the salutary principles of injunction or the factors necessary for an order of injunction are not with the plaintiff then the trial Court has not committed any apparent error in refusing the injunction order in favour of the plaintiff.

Thus the refusal; to pass any injunction order by the Trial Court cannot be said to be bad in law.

Therefore considering the above deliberations, I am of the opinion that although the reasoning given by the Civil Judge for refusing the interim order may not be perfect but after considering the essential factors it can be said that the decision of the Civil Court is justified and does not suffer from any kind of infirmity as debility.

Accordingly, the appeal is liable to be discarded.'

The petitioner being aggrieved by the Order dated 23-03-2021 passed by Learned Additional District Judge 3rd Court Barrackpore North 24 Parganas in Miscellaneous Appeal No. 5 of 2022 has come up with this instant application under Article 227 of the Constitution of India.

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

Learned Advocate for the petitioner submits that the petitioner has obtained a valid lease for 99 years on 4th February 1999 pursuant to the execution of a judgment and decree dated 30th March, 1987. A wide publication had also been made in the newspapers as stated hereinabove prior to executing the said ex-parte decree. The said decree has not been challenged by the opposite party and has attained finality. Learned Advocate further submits that the petitioner was not a party to the partition suit being Suit No. 947 of 1987, and any judgment and decree passed in the said suit and/or any action taken in furtherance thereof is not binding on the petitioner. The petitioner's right is occurred by the judgment and decree passed in the said suit and/or any action

taken in furtherance thereof is not binding on the petitioner. The petitioner's right is occurred by the judgment and decree dated 30th March 1987 passed in favour of the petitioner with regard to the suit premises. The said decree is valid and has not been challenged in any proceedings. Learned Advocate also submits that letters dated 9th August 1983 and 1st September 1983 clearly and prima facie establish that the petitioner was handed possession of the suit premises by Amal Chandra Law and Chhaya Law. It is submitted by the Learned Advocate that the opposite party has already constructed a building on the suit premises causing immense loss injury, prejudice and hardship to the petitioner. Interim injunction ought to be granted under such prima facie in order to prevent an irreversible situation by the time the dispute is decided precluding the petitioner from fair and just decision. Learned Advocate further submits that prima facie case in matters pertaining to temporary injunction is not to be confused with title of the plaintiff/petitioner which is to be established on evidence but it would be sufficient if substantial question at first sight needs investigation and decision whereas irreparable injury does not mean that there must be no Physical possibility of compensating the injuries but it means that only that only that injuries which cannot be compensated in terms of money.

In ascertaining the balance of convenience the Courts are to weigh and compare the substantial mischief that is likely to be done to the plaintiff/petitioner, if injunction is refused. It is further submitted that the very essence of the concept of temporary injunction during the pendency of a civil

litigation involving a property is to prevent its threatened wastage damage and alienation by a party thereto, to the immeasuarable prejudice to the other side or to render the situation irreversible not only to impact upon the ultimate decision but also to render the relief granted illusory. Learned Advocate also submits that in the instant case the petitioner has been able to establish that there is a prima facie case that needs to be investigated and there cannot be a mini-trial at the stage of grant of temporary injunction.

It is submitted that the ex-parte and interim order of injunction that was passed on 5th September 2005 was on the assertion that the petitioner was in possession and this possession was being interfered with by the opposite party. This Order was confirmed on consent by the opposite party by an order dated 11th March 2008. After having consented to confirmation of the order regarding the possession of the petitioner even as on March 2008, the opposite party is disentitled in law to take a contradictory stand regarding the possession of the petitioner.

Learned Advocate relies upon the following Judicial decisions:

Ganubai Babiya Chaudhury and ors VS Sitaram Balachandra Sukhendar and ors.

Reported in (1983) 4 SCC-P-31.

Satya Prakash and Anr. VS 1st Additional District Judge Etah and Ors.

Reported in (2002) SCC Online Allahabad-198.

Dalpat Kumar and Anr. VS Prahlad Singh and Ors.

(1992) 1 SCC. 719.

Dev Prakash and Anr. VS Indra and Ors.

Reported in (2018) 14 SCC. 292.

Maharwal Khwaji Trust (Regd). Faridkat VS Baldev Dass.

Reported in (2004) 8 SCC. 488.

Anand Prasad Agarwalla. VS Tarkeshwar Prasad and Ors.

Reported in (2001) 5 SCC. P-568.

Kishore Kumar Khaitan and Anr. VS Praveen Kumar Singh.

Reported in (2006) (3) SCC.P-312.

Learned Advocate for the opposite party submits that the opposite party has filed a Title Suit being T.S. No. 94 of 2017 before the Court of the Learned 4th Civil Judge (Junior Division) at sub-Division Court at Barrack Pore). Praying for declaration against the alleged Deed of Lease dated 04.02.1999, and appropriate injunction, in the said suit. By an ad-interim order dated 06.04.2017, the Learned Court Below was pleased to restrain the petitioner herein from disturbing the peaceful possession of the opposite party in the entire subject property. Such Order is made absolute till disposal of suit. The

Injunction order passed in Title Suit No. 94 of 2017 having attained finality the petitioner cannot seek a contrary and diametrically opposite order against the opposite party with respect to the same property. Learned Advocate further submits that before the Court of 1st instance the petitioner had prayed for injunction with respect to possession and construction vis-à-vis the said property. Before the Appellate Court the relief vis a vis construction was abandoned and a fresh relief with regard to creation of 3rd party interest was introduced. The relief with respect to possession was however claimed by the petitioner before the Learned Appellate Court. Therefore the petitioner is not entitled to press for reliefs with regard to construction since the same was abandoned before the 1st Appellate Court. It cannot also seek reliefs with regard to creation of 3rd party interest since the same was not even prayed for before the Court of 1st instance and was only prayed for before the Appellate Court for the Court for the first time. As regards the reliefs with respect to possession the petitioner is not entitled to the same for the reasons mentioned hereinabove. Learned Advocate also submits that the petitioner has miserably failed to substantiate its prima facie possession of the said property and as such failure disentitles the petitioner from claiming any injunction with respect to the possession of the said property. Learned Advocate relies upon the following Judicial decisions:

Awraville Foundation. VS Natasha Storey.

Reported in 2025 SCC Online S.C. 356.

Khan Mohammed Khan and Ors. VS Jam Mohammed Khan.

2015 SCC Online Cal-6415.

S.P. Chengal Varaya Naidu (Dead) by CAS VS Jagannath (Dead) by LRS and Ors.

Reported in 1994(1) SCC. 1.

Mohammed Seraj VS Adibar Rahaman Shakh and Ors.

Reported in 1968 SCC Online Cal-43.

EXL Careers and Anr. VS Frakhfina Aviation.

Reported in (2020) 12 SCC-667.

Axis Bank Ltd. VS MPS Greenary Developers Ltd.

Reported in 2010 SCC Online. Cal-1717.

Kishore Kumar Khaitan and Anr. VS Praveen Kumar Singh.

(2006) 3 SCC. 312.

Garment Craft. VS Prakash Chand Goal

Reported in (2022) 4 SCC. 181.

Becthumal Raciehand Oswal. VS Laxmibai R. Tarta and Anr.

Reported in (1975) 1 SCC 858.

Trimbak Gangedhar Telang and Anr. VS Ramchandra Ganesh Bhide and Ors.

Reported in (1977) 2 SCC-437.

Before proceeding to decide the material in issue it is necessary to consider the provisions contained in Order 39 Rule 1 and 2 of the Code of Civil Procedure.

Order XXXIX Rule 1 CPC provides as follows:

1. Cases in which temporary injunction may be granted-

   Where in any suit it is proved by affidavit or otherwise-

   a) that any property in dispute in a suit is in danger of 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 defendants threatens to dispossesses the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit

   the Court may be order grant a temporary injunction to restrain such act or make such 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.

Thus before granting temporary injunction Courts have to see that the conditions laid down under Rule 1 of Order 39 is fulfilled.

Courts have power to grant injunction in cases the Court finds the suit property may be alienated or wasted, or damaged. Now the point to be considered is whether Courts have power to pass order of injunction to prevent alienation of property during pendency of litigation inspite of existence of Section 52 of the Transfer of Property Act.

Thus it is also necessary to consider Section 52 of the Transfer of Property Act.

Section 52 of the Transfer of Property Act provides as follows:

52. **Transfer of property pending suit relating thereto**-During the pendency in any Court having authority within the limits of India, excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to effect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation – For the purposes of this Section, the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained or has become oblivious by reason of the exp-iration of any period of limitation prescribed for the execution, thereof by any law for the time being in force.

The matter in issue relates to seeking interim protection with regard to possession, from making construction, and from creating third party interest, with regard to the suit property. With regard to the possession of the suit property as both the Learned Trial Court and the Appellate Court has come to a finding that the petitioner is not in possession of the suit property this Court in exercise of Supervisory Jurisdiction under Article 227 of the Constitution of India does not think it reasonable to enter into the merits of such findings at this stage and leave the issue to be decided at the time of trial. However with regard to the interim protection sought regarding construction at the suit property and alienation to third parties it is necessary to consider some judicial pronouncements.

In the case of Gangubai Bablya Choudhuri (supra) the Hon'ble Supreme Court observed as follows:

‘6. When an interim injunction is sought, the Court may have to examine whether the party seeking the assistance of the Court, was at any time in lawful possession of the property and if it is so established one would prima facie ask the other side contesting the suit to show how the plaintiffs were dispossessed? We pin-pointed this question and heard the submission. We refrain from discussing the evidence and recording our conclusions because evidence is still to be led and the contentions and disputes have to be examined in depth and any expression of opinion by this Court may prejudice one or the other party in having a fair trial and uninhibited decision. Having given the matter our anxious consideration, we are satisfied that this is not a case in which interim injunction could be refused. Similarly we are of the opinion that if respondents are allowed to put up construction by the use of the F.S.I. for the whole of the land including the land involved in dispute, the situation may become irreversible by the time the dispute is decided and would preclude fair and just decision of the matter. If on the contrary injunction is granted as prayed for the respondents are not likely to be inconvenienced because they are in possession of about 9,000 sq. metres of land on which they can put up construction.’

In the case of Dalpat Kumar and Another (supra) the Hon’ble Supreme Court observed as follows:

‘4. Order 39, Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, 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... 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. Pursuant to the recommendation of the Law Commission clause(c) was brought on statute by Section 88(i)(c) of the Amending Act 104 of 1966 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151, C.P.C. to grant ad interim injunction against dispossession. Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting ad interim injunction is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right

would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it

with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.'

In the case of Satya Prakash and another (supra). The Hon'ble Court observed as follows:

'12. It is. settled principle of law that discretion conferred under Order XXXIX, Rules 1 and 2. C.P.C. in granting or refusing temporary injunction is discretionary and like other cases of discretion is vested in Courts which is to be exercised in accordance with reasons and sound judicial principles. The sound judicial principles which govern the exercise of discretion conferred under Order XXXIX. Rules 1 and 2. C.P.C. upon trial courts are to the effect that a person who seeks a temporary injunction must satisfy the Court, firstly that there is a serious question to be tried in suit to dispel cloud of doubt relating to his entitlement and there is probability of plaintiff being entitled to the relief sought by him. Secondly, the Courts' interference is necessary to protect him from threatened species of injuries enumerated under Order XXXIX, Rules 1 and 2, C.P.C., which the Court considers irreparable before his legal right, can be established on trial. Lastly, the comparative inconvenience which is likely to ensue from withholding temporary injunction would be

greater than that which is likely to arise from granting it. Prima facie case is not to be confused with title of the plaintiff which is to be established on evidence but it would be sufficient if substantial question at first sight needs investigation and decision whereas irreparable injury does not mean that there must be no physical possibility of compensating the injuries but it means only that injuries cannot be compensated in terms of money. In ascertaining the balance of convenience, the Courts are to weigh and compare the substantial mischief that is likely to be done to the plaintiff, if injunction is refused. It is held that while Courts are considering balance of convenience, the Courts are also required to keep in mind the public convenience as well. It is well to remember that aforesaid three ingredients are to be proved on affidavits as envisaged under Order XXXIX Rule 1. C.P.C. The power given to Courts to act on affidavits is unfettered and it is not subject to the provisions of Order XIX Rules 1 and 2. C.P.C.

13. It is further to be imbibed that all of the three conditions precedent must co-exist for granting temporary injunction under Order XXXIX. Rules 1 and 2. C.P.C. If any of them is missing, then temporary injunction applied for is to be rejected. It would be expedient to mention here that in a peculiar facts and circumstances of a case in rarest of rare cases if interest of justice so demands that property in dispute deserves to be preserved in its present condition till clouds of doubt are dispelled by deciding the suit on merit, in such cases, temporary injunction can also be granted under Section 151, C.P.C. which provides that nothing in the Code shall be deemed to limit or

otherwise affect the inherent power of Court to make orders necessary in the ends of justice. The inherent power has not been conferred upon the Court but it is inherent in the Court by virtue of its duties to do justice between the parties. Therefore, in those cases where granting of temporary injunction is found to be imperative in the interest of justice even if any of the conditions precedent mentioned hereinabove is missing, the Court can grant temporary injunction in exercise of its power under Section 151, C.P.C. It is held that even if an application for temporary injunction under Order XXXIX, Rules 1 and 2, C.P.C. is rejected, even then the plaintiff can move fresh application under Section 151, C.P.C. with a distinction that in case temporary injunction is granted under Order XXXIX, Rules 1 and 2, C.P.C.. then Misc. Appeal is maintainable under Order XLIII, Rule 1. C.P.C, but if an injunction is granted under Section 151, C.P.C., then no Misc. Appeal would be maintainable, only revision would be entertainable under Section 115, C.P.C.'

In the case of Anand Prasad Agarwalla (supra) the Hon'ble Supreme Court observed as follows:

"6. It may not be appropriate for any Court to hold mini trial at the stage of grant of temporary injunction. As noticed by the Division Bench that there are two documents which indicated that there was prima facie case to be investigated. Unless the sale certificate is set aside or declared to be a nullity, the same has legal validity and force. It cannot be said that no right could be derived from such certificate. Secondly, when the contesting respondents were in

possession as evidenced by the record of rights, it can not be said that such possession is by a trespasser. The claim of the contesting respondents is in their own right. The decisions referred to by the learned counsel for the appellant are in the context of there being no dispute as to ownership of the land and the possession was admittedly with a stranger and hence temporary injunction is not permissible. Therefore, we are of the view that the Division Bench has very correctly appreciated the matter and come to the conclusion in favour of the respondents. In these circumstances, we dismiss these appeals. We may notice that the time bound directions issued by the Division Bench will have to be adhered to strictly by the parties concerned and the suits should be disposed of at an early date but not later than six months from the date of the communication of this order."

In the case of Dev Prakash and Another (supra) the Hon'ble Supreme Court observed as follows:

'13. In the preponderant factual backdrop, as outlined hereinabove, we are of the view that not only the reasons endeavoured to be cited in the impugned order[1] in justification of the direction for public auction of the suit property lack in persuasion, those are apparently speculative and illogical, to say the facts and circumstances of the case, clearly militates against the fundamental precept of preservation of subject-matter of any dispute pending adjudication in a court of law, more particularly relatable to a civil litigation, to appropriately decide on the rights of the parties for administering the reliefs to which they would be entitled

eventually on the culmination of the adjudication. As it is, the very essence of the concept of temporary injunction and receivership during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable impact upon the ultimate decision but also to render the relief granted, illusory. We do not wish to burden this order by the decisions of this court on the issue except referring to the one in Maharwal Khewaji Trust v. Baldev Dass[2], wherein it has been underlined that unless and until a case of irreparable Loss or damage is made by a party to the suit, the court should not permit the nature of the property to be changed, which may include alienation or transfer thereof leading to loss or damage been caused to the party who may ultimately succeed and which would as well lead to multiplicity of proceedings. Judicial discretion has to be disciplined by jurisprudential ethics and can by no means conduct itself as an unruly horse'.

In the case of Maharwal Khewaji Trust (Regd) Supra the Hon'ble Supreme Court observed as follows:

"10. Be that as it may, Mr Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is

made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the high court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the high court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored."

In the case of Kishore Kumar Khaitan and Anr. (supra) the Hon'ble Supreme Court observed as follows:

"14. Thus, prima facie, we find that the tenancy claimed by the plaintiff remains to be proved in the suit. For the present, we should say that prima facie, the plaintiff has not been able to establish the foundation for the possession claimed by him. It is significant to note that not even another tenant of the building among the various tenants in the building, was examined to establish that the

plaintiff while in possession, had been dispossessed on 20.6.1998 as claimed by him. Anyway, the Additional District Judge has not referred to any such evidence except referring to the affidavit of Shivanand Mishra, who even according to the plaintiff was no more in occupation. Thus, the disturbance of the status quo by the defendants has not been established. Thus, prima facie it is clear that the plaintiff has not laid the foundation for the grant of an interim order of mandatory injunction in his favour. The order so passed by the Additional District Judge, and confirmed by the High Court, therefore, calls for interference in this appeal.

15. Before parting, it is necessary to notice the argument that after the order of the High Court and after the filing of this petition for special leave to appeal to this Court, the plaintiff was put in possession pursuant to the order under challenge through the process of court. Now that we have set aside the order of the High Court and that of the Additional District court and rejected the prayer of the plaintiff for mandatory injunction, the defendants would be entitled to re-delivery of possession by way of restitution. The possession will be restored to them through court. But considering the questions to be decided in the suit, we direct the defendants, once they are put in possession of the premises in restitution, not to create any third party interest in respect of the plaint schedule building (being a part of the whole building) pending disposal of the suit. Considering the nature of the suit and the question involved, we would request the trial court, in which the suit has been filed, to try and dispose of the suit expeditiously. We clarify that it would not be necessary to consider the interim

application for prohibitory injunction separately and the same would also be disposed of along with the suit by the trial court. The suit will be disposed of after trial untrammeled by any of the observations contained in these interim orders."

In the case of Auroville Foundation (supra) the Hon'ble Supreme Court observed as follows:-

"11. In the instant case, the Respondent-Natasha Storey had challenged the Office Order dated 01.06.2022 by filing the earlier Writ Petition No. 22895 of 2022, and the High Court while dismissing the same vide its Order dated 13.10.2022 had categorically held, after considering the various provisions of the A.F. Act, that the activities which are provided under Section 19 of the Act, to be undertaken by the Residents' Assembly are only in the nature of supplementing and not supplanting the main powers and functions vested with the Governing Board under the provisions of the Act, and that the writ petitioner could not claim that she being a member of the Assembly, the right of the Assembly was getting affected, or the functions of the Assembly as entrusted through the provisions of the Act were getting affected. Despite the fact that the said judgment and order passed in Writ Petition No. 22895 of 2022 was not challenged by the respondent any further, and had become final, the second Writ Petition was filed by her (i.e., Writ Petition no. 25882/2022 in the present proceedings), seeking substantially the same reliefs without disclosing the said material fact of dismissal of earlier petition. The non-disclosure of the material facts at the instance of the

respondent should have been seriously viewed by the High Court, as the abuse of the process of court."

In the case of Khan Mohammed Khan and Ors (supra) the Hon'ble Court observed as follows:

"10. In the present case, the plaintiff/opposite party not only suppressed the execution of a deed of partition dated 13.6.1984 but have consciously omitted to mention the institution of an earlier suit for partition and rejection of an application for temporary injunction. The Appellate Court though recorded that those facts are not disclosed by the plaintiff/opposite party in the plaint but proceeded to grant an injunction as Section 14 of the West Bengal Land Reforms Act does not recognize the partition to be effected by a non-registered document. It is immaterial at the stage of temporary injunction whether the partition deed dated 13.6.1984 can be legally sustainable or not but the fact remains that the plaintiff/opposite party suppressed the existence of the said deed in the plaint. Furthermore, the Appellate Court overlooked the suppression of the other facts relating to the institution of an earlier suit in which the plaintiff/opposite party was not favoured with an order of temporary injunction. The order rejecting an application for temporary injunction in an earlier suit was a well reasoned order and the disputes involved in the instant suit was also noticed therein. In equitable jurisdiction the approach should be honest and clear. Suppressing the material facts is seriously viewed and disentitles a person to get the order of injunction from the Court exercising such jurisdiction. Though the Higher Court

should seldom interfere with the discretionary order even when another view is possible. The Higher Court may interfere with the discretionary order if the same can be tainted as irrational, unreasonable and beyond the legal periphery. Merely because another view is possible the Court should not upset the discretionary order and should refuse the interference

11. There is no hesitation in my mind that the plaintiff/petitioners have consciously and deliberately suppressed the material facts and, therefore, the Court of appeal below ought not to have granted the order of injunction."

In the case of S.P. Changal. Varaya Naidu (Dead) by LRS (supra) the Hon'ble Court observed as follows:

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of

life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-1S) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the

other side then he would he guilty of playing fraud on the court as well as on the opposite party."

In the case of Mohammed Seraj (supra) the Hon'ble Court observed as follows:

"15. In sum, suits may come and go, withdrawn with or without liberty to sue afresh, dismissed or decreed, - no matter which - but statements made therein, - no matter where, in pleadings, petitions, affidavits, or evidence - remain for ever and for all purposes too allowed by law such as to be proceeded with as admissions, when they are found to be such, so long as they are not rebutted, (section 17 et seq., Evidence Act), or to be confronted with under S. 145 ibid. Otherwise the court, no less the party interested, will be deprived of very valuable evidence, nothing to say of a premium being put on reckless allegations with no apprehension of the makers thereof coming to grief in future for such glibness. Mr. Ghose's contention, therefore prevails over Mr. Lala's paragraph 6 ante. I find so."

In the case of EXL Careers and Anr. (supra) the Hon'ble Court observed as follows:

"15. Modern Construction (supra), referred to the consistent position in law by reference to Ramdutt Ramkissen Dass vs. E.D. Sassoon & Co., Amar Chand Inani vs. The Union of India, Hanamanthappa vs. Chandrashekharappa, (1997) 9 SCC 688, Harshad Chimanlal Modi (2) and after also noticing Joginder Tuli, arrived at the conclusion as follows:

"17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same."

Joginder Tuli (supra) was also noticed in Harshad Chimanlal Modi (II) (supra) but distinguished on its own facts.

16. We find no contradiction in the law as laid down in Modern Construction (supra) pronounced after consideration of the law and precedents requiring reconsideration in view of any conflict with Joginder Tuli (supra). Modern Construction (supra) lays down the correct law. We answer the reference accordingly."

In the case of Axis Bank Ltd(supra) the Hon'ble Court observed as follows:

"Therefore, the question that falls for determination in this appeal is whether this appeal should be allowed and the order impugned should be set

aside on the ground of want of territorial jurisdiction of the learned Trial Judge to entertain the suit on basis of averments made in the plaint.

There is no dispute with the proposition of law that an application for temporary injunction, whether at the ad interim stage or at the final hearing stage, is decided on the basis of prima facie case of the applicant to go for trial. If the prima facie case is established, the Court dealing with such application then considers the other two factors, viz. whether the balance of convenience and inconvenience is in favour of granting the injunction and the question of irreparable injury of the applicant if the prayer is not allowed. However, in the absence of proof of prima facie case, the other two factors indicated above are insignificant.

We are quite conscious that the word "prima facie" case does not mean a case proved to the hilt, but is one, which is at least "an arguable one" at the time of trial. At the stage of considering the prima facie case, the Court has, however, a duty to see whether the suit is maintainable before that Court. In other words, the Court at that stage also should be prima facie satisfied with the existence of its jurisdiction to entertain such suit, be it territorial, pecuniary, or inherent.

If at that stage, the Court prima facie finds that from the averments made in the plaint itself, the Court has no territorial jurisdiction to entertain the suit in accordance with law, it should not consider the other two factors and reject the application on the ground of absence of prima facie jurisdiction of the Court to give the ultimate relief to the plaintiff.

We are unable to accept the extreme submission of Mr. Roychowdhury that at the stage of grant of ad interim injunction, the Court is not required to see the prima facie jurisdiction of the Court to entertain the suit until the other side appears and complains about such lack of jurisdiction. As provided in Order VII Rule 10 of the Code, "the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted." The language employed therein is imperative in nature and the legislature did not permit the Court to unnecessarily be burdened with a suit over which it has no jurisdiction giving the Court the authority of returning the plaint without waiting for trial if it appears from the averments made in the plaint itself that it has no jurisdiction. The effect of an order of return of plaint is that the interim order, if any, passed in the suit automatically is vacated and unless the plaintiff gets the benefit of Section 14 of the Limitation Act, the suit may even be barred by limitation on the date of representation before the appropriate Court."

In the case of Garment Craft (supra) the Hon'ble Court observed as follows:

"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under

challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice."

In the case of Bathutmal Raichand Oswal (supra) the Hon'ble Supreme Court observed as follows:

"7. The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court ? It is well settled by the decision of this Court in Waryam Singh V. Amarnath[1] that the

… power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee[2] to be exercised most sparingly and only in appropriate cases in order to keep the

subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in a subsequent decision of this Court in Nagendra Nath Bora v. Commissioner of Hills Division[2] and it was pointed out by Sinha, J., as he then was, speaking on behalf of the Court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court or tribunal. Its function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it. What Morris, L.J. said in Rex V. Northumberland Compensation Appeal Tribunal[4] in regard to the scope and ambit of certiorari jurisdiction must apply equally in relation to exercise of jurisdiction under Article 227. That jurisdiction cannot be exercised as

the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings.

If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a foriori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts."

In the case of Trimbak Gangadhar Telong and Anr. (Supra) the Hon'ble Court observed as follows:

> *"3. As would be apparent from the above narrative, the instant case does not involve any substantial question of a law of general or public importance. Although counsel for the appellants has strenuously assailed the correctness of the findings of the Revenue Tribunal and of the High Court, we are unable to accede to his contention. We have not, despite careful consideration of the judgments and objections submitted to us, been able to discern any legal infirmity or error either in the decision of the Revenue Tribunal or of the High Court. It is a well settled rule of practice of this Court not to interfere with the exercise of discretionary power under*

Articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution. In the instant case, we have not been able to find any such flaw. The finding of the Revenue Tribunal that the respondents were independent tenants of separate parts of the land in dispute under Vasudeo Balwant Telang, the predecessor-in-interest of the appellants, which has been affirmed by the High Court, appears to be well founded in view of the following proved facts and circumstances:

1. *The entry made in the record of rights after due enquiry according to law about the status of the respondents Nos. 2 and 3 as protected tenants in respect of the portions of the land in dispute in their possession.*

   2. Separate payment of the rent by the respondents and acceptance thereof by Vasudeo Balwant Telang.

   3. Application by Vasudeo Balwant Telang for declaration that respondents were jointly and severally responsible for payment of rent of the land in dispute.

4. Notices by Vasudeo Balwant Telang to the respondents terminating their tenancies on the ground that he required the portions of the land in their respective possession for personal cultivation.

5. Application filed by Vasudeo Balwant Telang against the respondents u/s 31 of the 1918 Act averring that he bonafide required the land for his personal cultivation."

Upon considering the Judicial decisions with regard to the limitations of the Supervisory jurisdiction of the High Court under Article 227 of the Constitution it will appear that it is well settled that Courts in exercise of Powers under Article 227 of the Constitution does not act as a Court of Appeal, but it is a supervisory jurisdiction. It is already observed above that with, regard to the issue of findings by both the Learned Trial Court and Appellate Court about the petitioner not being in possession, it will not be interfered at this stage and this Court relegates the same to trial. With regard to the Judicial decisions about suppression of material facts as the facts which are material to the issue various from case to case and as these points were not argued before the Learned Trial Court and the Learned Courts did not base their findings on these points this Court does not think fit to go into the issues.

Now the point for consideration is whether the Learned Courts took the correct approach in refusing injunction on the prayer sought by the plaintiff restraining the defendant from making unauthorized construction at the suit property.

It is an admitted position that the plaintiff did not claim absolute right over the suit property but limited right by deed of lease and by order of Court. Even if it is assumed that plaintiff was not in possession of suit property but it is not the case that suit is prima facie not maintainable and the plaintiff has no case at all. Right to property although not a Fundamental Right but it is a Constitutional Right. Thus when a person approaches Court of law for being deprived of his right to use property the Court has duty to adjudicate and protect that right even if the right claimed is a limited right and not an absolute right. However to adjudicate and protect a litigant's right with regard to property the Court should take steps to preserve the said property in exercise of power under Rule-1 of Order 39 of the Code of Civil Procedure.

As it is held in different Judicial Pronouncements the Courts duty to preserve the suit property at the cost of repetition the observations of the Hon'ble Supreme Court in the case of Maharwal Khewaji Trust (regd). Supra. is quoted once again.

"10. Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long

time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellants claim being found baseless ultimately, it is always open to the respondent to claim damages, or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored."

Considering the nature of dispute and the judicial decisions relied upon this Court is of the view that both the Learned Trial Court and the Learned Appellate Court erred in refusing the praying for injunction restraining the defendant to put up construction at the suit property. Thus that part of the order cannot be sustained and the same should be set aside. The matter should be remitted to the Learned Trial Court for reconsideration of the issue upon obtaining report from Learned Special Officers.

With regard to the findings of the Learned Appellate Court that plaintiff has remedy under Section 52 of the Transfer of Property Act it is true that such

remedy is there but considering the nature of the case discretion of passing injunction with regard to alienation of property can be exercised under Order 39 Rule 1 of the Code of Civil Procedure. However as the Petitioner did not make any prayer before the Learned Trial Court this Court does not think fit to restrain the defendant in making alienation or entering into contract but impose certain conditions at the time of alienation.

Thus Mr. Kajal Roy Advocate Ph-9331768366 and Ms. Lipika Chatterjee Learned Advocate 9432640507, are appointed as Joint Special Officers. Learned Special Officers shall visit the suit property upon notice to both parties and their Learned Advocates and take photographs of the suit property and the construction on the property if any. Learned Special Officers shall also ascertain as to the persons occupying the suit property the date from such occupation and under what capacity they are occupying. Upon causing the inspection Learned Joint Special Officers shall submit the report before the Learned Trial Court for reconsideration of the issue of injunction regarding construction. Such inspection shall be conducted within 2 weeks from the date of communication of the Order, and the report shall be submitted within one week thereafter. Upon considering the report and upon hearing the parties Learned Trial Court shall reconsider the issue of injunction regarding construction very expeditiously.

Learned Special Officers shall affix a notice on a conspicuous place in the suit property that the property is subject matter of Title Suit-being T.S. 1321 of

2015 pending before Learned Civil Judge (Senior Division) 3rd Court Barasat. The defendant in the event intends to enter into contract with regard to suit property with 3rd parties shall mention in the said contract or deed of transfer the case number pending before Trial Court and that the contract or transfer shall abide by the result of the suit.

Learned Special Officers shall be entitled to an initial remuneration of 800 G.M. each to be paid by the petitioner/plaintiff. However at the time of discharge by the Trial Court they shall be paid 200 G.M. each.

Thus this application under Article 227 of the Constitution of India stands allowed in part. The rejection of the prayer for injunction with regard to construction at suit property passed by Learned Civil Judge (Senior Division) 3rd Court Barasat in T.S. no. 1321 of 2015 is set aside. The matter is remitted to Learned Trial Court to reconsider the issue upon receipt of Report of Learned Special Officers as observed above.

The defendant/respondent is permitted to enter into contract or alienate any portion of suit property to third party on mentioning in the contract or transfer deed the case number pending before trial Court and that the contract or alienation shall abide by the result of the suit. With regard to refusal of injunction by both Learned Courts, regarding disturbance of possession no interference is made at this stage.

This application stands disposed.

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)