

Title Suit No. - 33 of 2024
CIS Reg. No. - 33 of 2024

Order No.: 11 Dated: 06.09.2024

Today is fixed for **hearing of temporary injunction petition on *ex-parte*.**

Learned Advocate for the Plaintiff is present by filing *hazira*.

The petition filed by the Plaintiff/Petitioner under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 is taken up for hearing on *ex-parte*.

The instant suit is for declaration and other consequential reliefs.

The Learned Advocate appearing on behalf of the Plaintiffs/ Petitioners has submitted before this Court, *inter alia*, that allegedly the Schedule 'A' property (hereinafter referred as 'Suit property') originally belonged to one Kanailal Roy which he inherited from his predecessor. Furthermore, allegedly the aforesaid Kanailal Roy died leaving behind his two sons namely Nirmal and Amal and two daughters namely Anita and Mukta. Furthermore, allegedly the successors of Kanailal Roy divided their ancestral property by way of an amicable family arrangement and the Plaintiff thereafter got his right, title, interest and possession over the suit property. Furthermore, allegedly the name of the Plaintiff has been duly recorded in the finally published L.R. Record-of-Rights being No. 77 of Mouza: Brahmanyara in respect of his share in the suit property.

Furthermore, allegedly the Schedule 'B' property situates adjacent to the suit property and belongs to the Principal Defendants. Furthermore, allegedly the Principal Defendants without having any right, title, interest and possession over the suit property entered therein on 20.03.2023 and destroyed the plantation of the Plaintiff and cut away some valuable trees. Furthermore, allegedly the Principal Defendants are trying to encroach upon the suit property by undertaking construction work thereat.

Furthermore, the Plaintiff allegedly has a good *prima facie* case, the balance of convenience and inconvenience lies in his favour and that he would suffer irreparable loss and injury by the acts of the Principal Defendants.

Accordingly, it has been prayed that an order of temporary injunction be passed restraining the Principal Defendants/ Opposite Parties Nos. 1 to 3 from disturbing the peaceful possession of the Plaintiff in the suit property and from changing the nature and character thereof.

Perused the case record and other materials placed before me.

Considered.

On careful perusal of the application and after having considered the submission of the Learned Counsel and having gone through the entire set of documents, this court finds that the Plaintiff has not been able to submit any document which can show his actual possession over the suit property. In addition, it appears that the Plaintiff is not in exclusive possession of the suit plot and admittedly the Principal Defendants are the co-sharers in the suit plot.

It further appears that the Schedule 'A' property given in the application does not bear any mention of the boundary upon which the Plaintiff is seeking the equitable relief. Furthermore, the description of the property in the Schedule of the plaint/ application is also not proper for its identification and implementation of an order of injunction, if any. Order 7 Rule 3 of the Code of Civil Procedure, 1908 requires that the description of the property given in the plaint/ application must be sufficient to identify the property. Therefore, in accordance with the aforesaid provision, this Court believes that the application without having the specific boundaries cannot see the light of the day.

Furthermore, this Court finds that the Plaintiff has never prayed for a local inspection for the determination of the present status of the suit property. This Court believes that the allegation as propounded by the Plaintiff with regard to his ownership over the suit property needs to be decided after leading evidence in the trial.

Accordingly, this Court is not in a position to adduce the Plaintiff with the remedy as prayed for.

This Court of equity, therefore, is not inclined to grant any interim relief to the Plaintiff against the Principal Defendants.

Hence, it is

ORDERED

That the **prayer of the Plaintiff for temporary injunction is hereby refused.**

The petition filed under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 is **disposed of on *ex-parte* without any order as to costs.**

Anything expressed herein shall not tantamount to the expression of opinion on the merits of the case.

The order is passed in open court.

The instant petition is, accordingly, **disposed of.**

To date **(30.09.2024)** for **filing W/S by the Defendant Nos. 4 & 5 and awaiting S/R, A/D, Appearance.**

CIS be updated accordingly.

Dictated & Corrected by me,

Sd/-
Civil Judge (Junior Division),
2nd Court, Sadar, Bankura

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2nd Court, Sadar, Bankura