

T.S.426/2024
WBSP120006482024
J.O Code:WB01337

Later, Dated 26.11.2024

Ld. Advocate for the plaintiff moves the petition under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure Code for Ad-Interim injunction against the defendants.

No caveat is pending as per the note of the Sheristadar.

Perused the record, the documents filed alongwith the petition and considered the submission of the Ld. Advocate.

Plaintiff files a petition for temporary injunction supported by affidavit praying for restraining the defendants from dispossessing the plaintiff from the suit property, from disturbing the peaceful possession of the plaintiff over the suit property and from changing the nature and character of the suit property.

In nutshell, it is the case of the plaintiff that the plaintiff purchased the suit property with specific demarcation from erstwhile owners namely Nuruddin Mondal and the plaintiff's name was duly recorded under khatian no.2246 and 2354. The defendant no.1 and 8 are the co-sharers of the suit plot. The rest of the defendants are the heirs of such Nuruddin Mondal. The defendants are trying to take forceful possession of the suit property and change the nature and character of the same. On 23.11.2024 the defendants threatened the plaintiff.

In support of his contention, the plaintiff has placed reliance on the following documents viz. original sale deeds being no.4257/2021, 4266/2022, certified copies of sale deeds being no.572/2019, 1892/2009 and plot information.

Considering the averments in the petition and documents filed, it appears to me that the plaintiff has been able to satisfy this Court that he is one of the co-sharers of the plot no.331. But as per plot information the defendant Nos.1 and 8 are co-sharers of the suit plot. Considering material on record, this Court is of view that there is prima facie case in favour of the plaintiff and if the order of injunction is not granted, the plaintiff will suffer irreparable loss and injury and at this stage, I consider the balance of convenience and inconvenience is tilting in favour of the plaintiff and for the reasons of urgency, I find that the plaintiff's petition bears merit. Therefore, it appears to me that there is sufficient ground for granting ad-interim injunction against the defendants.

Hence, it is,

ORDERED

that the defendants are hereby restrained from disturbing the peaceful possession of the plaintiff in the suit property till 12.12.2024.

Thus, the prayer for ad-interim injunction under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure Code, 1908 be and the same is considered and allowed.

The plaintiff is directed to comply the provision under Order XXXIX Rules 3 (a) and (b) of the Code of Civil Procedure Code.

Issue notice upon the defendants with a direction to file show cause within 15 days from the date of receipt of the notice as to why the temporary injunction shall not be granted.

Requisites at once by both ways.

Fix 16.01.2025 for S/R, AD & PR.

Dictated and corrected by me,

***Civil Judge (Junior Division) 2nd Court,
Diamond Harbour, South 24 Parganas***

***Civil Judge (Junior Division) 2nd Court,
Diamond Harbour, South 24 Parganas.***

Later,

Now the record is taken up for hearing of local inspection.

Learned Advocate moves the petition for local inspection to bring out the actual picture of the suit property before this Court. Plaintiff prayed for local inspection as defendants are trying to change the nature, character of the suit property. Under this circumstances it is therefore necessary to issue commission for local inspection.

Therefore, this Court is inclined to allow the petition filed for local inspection as per schedule of the petition for local inspection.

Hence, it is

ORDERED

That the petition for local inspection is hereby allowed.

Learned Advocate Mr. Joyanta Kumar Baidya of the Diamond Harbour Civil Bar is hereby appointed as advocate commissioner to hold inspection in the suit property as per points mentioned in the schedule of the application under order 39 rule 7 of the C.P. Code.

The plaintiff is directed to pay Rs. 2,000/- only to the learned Advocate commissioner as fees for holding commission at once. Writ will be issued after payment of fees.

The learned Advocate commissioner is directed to submit report within 15 days of the issuance of writ without granting any adjournment to any party.

The learned Advocate commissioner is directed to hold inspection after serving notice on both parties and their learned Advocates before holding inspection. The plaintiff is directed to supply copy of petition under order 39 rule 7 to the commissioner to facilitate inspection work. Let the ordering portion of the instant order be communicated to the advocate commissioner.

Todate 16.01.2025 for commissioner's report.

Dictated and corrected by me,

***Civil Judge (Junior Division) 2nd Court,
Diamond Harbour, South 24 Parganas***

***Civil Judge (Junior Division) 2nd Court,
Diamond Harbour, South 24 Parganas.***