

Present : Sri. Arindam Chakraborty
Civil Judge (Jr. Divn.) 1st Court, Hooghly
J.O. Code – WB01332

T.S. 550 / 2022

CNR No. WBHG04-000740-2022

Order No. 02, date: 09.09.2022 :

Record is put up on the prayer of the plaintiff.

Plaintiff has filed some documents through a list. Let these be kept with the record.

Ld. Advocate for the Plaintiff moves the application under Order XXXIX Rule 1 & 2 , CPC.

By filing the instant petition the plaintiff has prayed for an order of temporary injunction against the defendant no. 1 to 8 till the disposal of the suit with an order of ad-interim injunction till the disposal of the instant petition, on the ground stated therein.

Seen the office report, wherefrom it appears that no caveat is pending.

Issue notice upon the defendant no. 1 to 8 calling upon them to show cause within ten days of receipt of such notice as to why the prayer of the plaintiff for temporary injunction shall not be allowed.

Hd. Ld. Advocate for the plaintiff.

In a nutshell the case of the plaintiff's is that, the plaintiff acquired the 'A' schedule property by virtue of a registered deed of sale being no. 9058 for the year 1974 and a subsequent deed of partition the defendants are the owners and possessors of the 'B' schedule property. The plaintiff has raised pucca construction on the 'A' schedule property by obtaining sanctioned building construction plan from the local municipality. The plaintiff has left statutory side space on the southern side of the 'A' schedule property which has been described under schedule 'C' and 'D' of the plaint. The 'C' and 'D' schedule property is a part and parcel of the 'A' schedule property. There is a small portion of vacant land on the southern side touching the south west corner of the 'A' schedule property which has been described under schedule 'E' of the plaint. It is alleged that on 06.10.2021 by taking the advantage of the absence of the plaintiff and his family members, the defendant no. 1 along

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with his family members illegally cut down all the plants standing over the 'A' schedule property and tried to grab the same. It is further alleged that the defendants have raised illegal construction over the 'B' schedule property without obtaining any sanctioned building plan by encroaching the 'D' schedule property of the plaint. The defendants have also installed one drain in the 'C' schedule property. The plaintiff informed the local municipality regarding the illegal unauthorised construction of the defendants over the 'B' 'C', 'D' and 'E' schedule properties but the municipality concerned did not take any proper steps. The plaintiff has also informed the local police station regarding the unauthorised construction of the defendants. It is further alleged that at present the defendants have been trying to dig a portion of the 'C' schedule property and on being requested by the plaintiff they refused to pay any heed to the same. Hence, the suit and the instant petition.

Peruse the plaint, petition and all documents filed by the plaintiff. It appears to me that Plaintiff has made out a prima facie case in his favour. From the documents relied by the plaintiff prima facie it appears that the plaintiff is the owner and possessor of the 'A' schedule property. Admittedly, the defendants are the owners and possessors of the 'B' schedule property. The 'C', 'D' and 'E' schedule properties prima facie appears to be a part and parcel of the 'A' schedule property. It has been admitted by the plaintiff that the defendants have already raised some sort of construction over the 'C', 'D' and 'E' schedule properties. Now if the allegation raised by the plaintiff is supposed to be true i.e. if the defendants succeed to raise further construction or to change the nature and character of the 'C', 'D' and 'E' schedule property then that may also lead to multiplicity of proceedings. The balance of convenience and inconvenience also seem to lie in favour of the plaintiff. So considering the urgency, I am inclined to allow the prayer of the plaintiff at this stage.

Hence, it is,

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ORDERED

that the prayer of ad-interim injunction is hereby allowed in the nature of status-quo.

Both the parties to this suit are hereby directed to maintain status-quo in respect of nature, character and possession of the 'C', 'D' and 'E' schedule properties of the plaint as on this day till

Plaintiff is hereby directed to comply with the provisions of Order XXXIX rule 3(a) and 3(b) C.P.C.

Requisite at once.

Todate.

D/C by me,

Sd/- A. Chakraborty

Civil Judge (Jr. Divn.)
1st Court, Hooghly.

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Civil Judge (Jr. Divn.)
1st Court, Hooghly.