

J. Misc. (P) 43 of 2022
C.I.S No. 96 of 2022
CNR WBEM0B-000832-2022
J. O. Code : WB01458

Order No. 04, dt. 16.12.2022 :

The record is taken up by way of put up petition.

Ld. Advocate of petitioner prays to move the application dt. 15.12.2022 filed u/Or. 39 R. 1 & 2 read with Sec. 151 of C.P.C.

The prayer is allowed.

Now, the record is taken up for hearing the petition made u/O. 39, Rules 1 and 2, read with Sec. 151, C.P.C.

It appears from the note of the *Sheristadar* that there is no Caveat pending in connection with this case.

Issue notice upon the opposite party, calling upon him to show cause within 15 days from the date of receipt of the notice as to why the temporary injunction as prayed for shall not be granted against him.

Now, let it be considered whether on the basis of the petition, plaint and filed documents, an order of ad interim injunction can be granted on ex parte.

Heard and considered the submissions of the Ld. Counsel for the petitioner and perused the materials on record including the documents relied upon by them.

Petitioner's case in nutshell is that total area of the 'Ka/1' scheduled land i.e. LR plot no. 300 is 54 decimal out of which 4 $\frac{1}{4}$ decimal of land was belonged to Arati Sau. She executed a sale deed on 12.09.2000 in favour of Pulin Chandra Rana. Accordingly his name was prepared and published in the ROR. Pulin Chandra Rana and other co-sharers are in possession in the 'Ka/1' scheduled suit land. The 'Ka' scheduled land is part and parcel of the 'Ka/1' scheduled land. The total area of the 'Ka' scheduled suit land is 8 decimal of land out of 54 decimal in the LR plot no. 300. Shambhu Maity, a co-sharer in the said plot executed a sale deed being no. 110207711 of 2022 in respect of 03.523 decimal of land in the 'Ka' scheduled land in favour of Samir Kumar Maity without serving any notice to the petitioner of this case. The petitioner came to know about the said sale and thereafter being a co-sharer of the said suit land has filed this case.

In support of the contention made by the petitioner, he has adduced original deed of sale being no. 5968/2000, certified copy of sale deed being no. 7711/2022 and LRROR bearing khatian no. 882 of mouja Sherpur Etoaribah.

The plaint, the injunction application as well as the original documents relied upon by the petitioner have been carefully traversed and considered. This court is of view that the petitioner has a prima facie case to go for trial. Balance of convenience and inconvenience tilts in favour of the petitioner. The petitioner has not proved urgency in the case. However, to avoid multiplicity of proceedings and as this court is of view that the instant prayer if not allowed the petitioner will suffer irreparable loss, this court is inclined to allow the instant petition.

Contd.....

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Contd.....

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Hence, it is,

ORDERED

that the application under Order 39 Rule 1 & 2 read with Sec. 151 of The Code of Civil Procedure, 1908 is hereby considered and **allowed**.

The OP is hereby restrained from alienating the 'Ka' scheduled property to any third party as on date till 16.01.2022.

The petitioner is directed to comply the provisions under Order 39, Rules 3 (a) and (b) of the Code of Civil Procedure at once.

Issue notice upon the opposite party, calling upon him to show cause within 15 days from the date of receipt of the notice as to why the temporary injunction as prayed for shall not be granted against him.

To date.

D & C by me,

Sd/-

Civil Judge (Jr. Divn),
1st Court, Contai.
J.O. Code: WB01458

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