

In the Court of Civil Judge (Jr. Divn.), 1st Additional Court, Contai.

Present: Smt. Soma Das.

T.S. 153 of 2022

CIS No. 521 of 2022

CNR No. WBEMOB-000842-2022

Order No. 02

18.11.2022

The record is put up and moved before this Court.

Ld. Advocate for the plaintiff moved the petition under Order 39 Rule 1 & 2 read with S. 151 of the C.P.C.

Plaintiff filed some documents by way of firisty.

No caveat is lying pending as per the note of the Bench Clerk.

It appears from the plaint that the plaintiff claim his title over the 'ka' scheduled property by dint of adverse possession. He further claimed that he has an agreement for sale of 'ka' scheduled property with the defendant no. 1 but defendant no. 1 without informing the plaintiff had executed sale deed being no. 7155 in favour of defendants no. 2 and 3. The plaintiff has been possessing the suit property for the last 20 years without any interruption and on consent of defendant no. 1. The casue of action arose on 04.12.2022 when all of the defendants threatened to dispossess the plaintiff from the 'ka' scheduled property.

In this regard, this Court observes that possession is the essence of granting injunction and if the plaintiff fails to bring prima facie proof that he is in possession, no injunction can be granted protecting the possession of the plaintiff.

In this case, the plaintiff has failed to produce any document to show his present possession over the 'ka' scheduled property.

So far as the injunction restraining the defendants from changing the nature and character of the suit property is concerned, this Court finds that it is admitted by the plaintiff that the defendants are the actual owner of suit property till date. Further it appears that the plaintiff has not prayed for specific performance of contract though he has stated that he had an agreement for sale with defendant no. 1.

In such circumstances, this Court is of the view that as the title of the property still lies with the defendants, they may be given a fair opportunity to raise their case before granting any injunction in this regard.

So, considering the urgency of the plaintiff and weighing the balance of convenience and inconvenience, this Court is not inclined to allow the present prayer of the plaintiff for ad-interim order of injunction.

Hence, it is

ORDERED

that the instant ad-interim petition for injunction filed by the plaintiff under Order 39 Rule 1 & 2 read with section 151 of the C.P.C is considered and refused at this stage.

Issue notice upon the defendants showing cause as to why an order of interim injunction shall not be passed against them.

Plaintiff is directed to file the requisites at once.

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

Heard Ld. Advocate.

This Court do not find any urgency to consider plaintiff's application U/O 39 Rule 7 of CPC at this stage.

Todate for hearing petition U/O 39 Rule 7 of CPC.

Sd/-

Civil Judge (Jr. Divn),

1st Additional Court, Contai.

J. O. Code WB01197

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