

T.S. 402 of 2022 (CIS: 402 of 2022)
CNR:WBEM0A000962 2022
J.O. Code No. W.B.01062.

Present : **Smt. Sarmistha Ganguly,**
 Civil Judge (Sr. Divn), 1st Court,
 Contai, Purba Medinipur.

Order no.02, dated 10-11-2022 :

The record is put up on the basis of a put up petition along with an application under **order 39, rule 1 and 2 read with section 151** of the Code of Civil Procedure filed by the plaintiff.

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

Heard the Learned Advocate for the plaintiff, ex parte.

Perused the materials on record as well as the original documents filed by the plaintiffs

Now, the record is taken up for order.

This is a suit for partition of the suit property by metes and bounds as filed by the plaintiff.

It appears from the contentions made by the plaintiff in the instant application that by dint of a Registered Deed of Sale executed in the year 1988, the plaintiff along with his two brothers namely Sushil and Sudhir being the defendant no.1 have acquired 1/3 share each measuring $5\frac{2}{3}$ decimals of land in respect of the 'Ka' schedule property comprised within the 'A' schedule property and have thereafter recorded their names in the Record of Rights and subsequently the plaintiff has come to learn that his brother Sushil has transferred his entire share in the 'Ka' schedule property to the defendant no.1 who is at present making pucca construction over the said property by encroaching upon the land of the plaintiff and also thereby forcibly dispossess him from the said property.

The plaintiff has filed Title Deed standing in his name, the defendant no.1 and their brother Sushil in respect of the 'Ka' schedule property comprised within the 'A' schedule property measuring 17 decimals in total from which it prima facie appears that the plaintiff is having right, title and interest therein. The plaintiff has also filed plot information in respect of the suit plot no.776 from which it also prima facie appears that both the plaintiff and the defendant no.1 are co-sharers in respect of the 'Ka' schedule property comprised within the 'A' schedule property.

Hence, the plaintiff has been able to establish his prima facie case with regard to the fact that he is a co-sharer with the defendant no.1 in respect of the 'Ka' schedule property comprised within the 'A' schedule property and is also in joint possession of the same with him and therefore, the balance of convenience and inconvenience has tilted in favour of the plaintiff. It also appears that the plaintiff will suffer from irreparable loss and injury if no appropriate order of ad interim injunction is passed at this stage to protect the interests of the plaintiff and to safeguard the undivided 'Ka' schedule property comprised within the 'A' schedule property. On the basis of the above discussion, this Court is inclined to allow the prayer of the plaintiff at this stage.

Hence, it is

ORDERED

that the application under order 39, rule 1 and 2 read with section 151 of the Code of Civil Procedure for ad interim injunction is **allowed, ex parte**.

Both the plaintiff and the defendant no.1 are hereby directed to maintain status quo in respect of nature, character and possession of the 'Ka' schedule property comprised within the 'A' schedule property as on this date **till 12-12-2022**.

Issue notice upon the defendant no.1 to show cause within seven days from the receipt of the same as to why the petition under order 39, rule 1 and 2 read with section 151 of Code of Civil Procedure shall not be allowed.

The plaintiff is directed to comply the provision under order 39 rule 3(a) & 3(b) of the Code of Civil Procedure.

To-date, **(05-06-2023)** for S/R and A/D.

D/C by me.

Civil Judge (Sr. Divn)
1st Court, Contai.

Civil Judge (Sr. Divn)
1st Court, Contai.