

T.S. 164 of 2022
C.I.S No. 505 of 2022
CNR No. WBEM0B-000810-2022
J.O. Code: WB01458

Order No. 03, dated 29.11.2022 :

The record is taken up by a put up petition filed by plaintiffs.

Plaintiffs have moved today a petition filed by him under Order XXXIX Rule 1 & 2 r/w Sec. 151 of CPC and another petition under Order XXXIX Rule 7.

The record is taken up for hearing of Petition under Order XXXIX Rule 1 & 2 r/w Sec. 151.

The plaintiffs has prayed thereby a temporary injunction.

Issue notice upon the principal defendants calling upon them to show cause within 15 days from the date of receipt of such notice as to why the plaintiffs' prayer for an order of temporary injunction shall not be allowed.

Now, let us consider whether on the basis of the statement made on affidavit by the plaintiffs and the documents filed, an order of ad-interim injunction as prayed for can be granted at this stage prior to issuance of notice upon the defendant.

Heard. Considered.

Perused the plaint, petition and all documents produced.

The plaintiffs' case in nutshell is that the 'Kha' scheduled suit land is the ejmal property of the plaintiffs along with other co-sharers. However, the plaintiffs have been possessing the same since the time of their father has been possessing the 'Kha' scheduled land constructing a house thereon. The 'Ka' scheduled suit land is used by the plaintiffs for egress and ingress to the 'Kha' scheduled land. At the western and southern side of the 'Ka' scheduled land there is 'Ga' scheduled property which is belonged to the principal defendants. The principal defendants are trying to encroach in the 'Ka' scheduled suit land and to change the nature and character of the same. There is no alternative pathway except the 'Ka' scheduled suit land for the plaintiffs. Hence, this suit.

In support of the contention made by the plaintiffs, they have adduced certified copies of plot information slips bearing J. L. No. 471 of mouja Fuleswar (8 sheets) under P.S. Conatai, certified copies of plot information slips bearing dag no. 1102/1232, 949/1217, 1102/1229, 1102/1231, 1102/1233, postal receipts etc.

The plaint, the injunction application as well as the original documents relied upon by the plaintiffs have been carefully traversed and considered. This court is of view that the plaintiffs have successfully proved the prima facie existence of 'Ka' scheduled suit property which is a pathway. The plaintiffs have a prima facie case to go for trial. The balance of convenience and inconvenience tilts in favour of the plaintiffs. Moreover, this Court is of view that if the instant prayer for ad-interim injunction is not allowed at this stage the plaintiffs may suffer irreparable loss.

Contd.....

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Contd.... Order no. 3, dated 29.11.2022 :

So, this court is inclined to allow the instant prayer for ad-interim injunction.

Hence, it is

ORDERED

that the ad interim injunction as prayed for is hereby allowed ex-parte.

Both the plaintiffs and the principal defendants are hereby directed to maintain status-quo in respect of the possession, nature and character of the 'Ka' scheduled suit property as on date till 03.01.2023.

Plaintiffs are directed to comply the provisions under Order XXXIX, Rules 3 (a) and (b) of the Code of Civil Procedure at once.

Now, the petition under Order XXXIX Rule 7 is taken up for hearing.

Heard. Considered. Perused.

The petitioners have prayed for local inspection of the suit property as the defendants are trying to change the nature and character of the suit property so, the present status of the suit property should be brought before the court.

Considering all, this court does not find any bar to allow the instant prayer and to bring true picture of the suit property might be of more help for the court. So, this court is inclined to allow the instant prayer.

Hence it is

ORDERED

That the petition for local inspection u/o XXXIX rule 7 of CPC is considered and **allowed ex parte**.

Let **Smt. Sangita Dutta Das**, Ld. Advocate of this Bar be appointed as local inspection commissioner in this suit for holding local inspection on the points stated in the petition for local inspections of the plaintiffs.

Ld. Advocate Commissioner is directed to cause service of notice upon both the parties before commencing his commission work.

Ld. Advocate Commissioner is further directed to observe all legal formalities before starting his Commission work.

Plaintiffs/Petitioners are directed to pay Rs. 3,000/- as commission fee to the learned Advocate Commissioner.

Issue writ after payment of commission fee.

To date(03.01.2023) for commissioner's report.

Dictated & corrected by me.

Sd/-

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