

Title Suit no.446 of 2022
CIS No.446/22
CNR No.WBBD03-001200-2022
J.O. Code-WB00997

Order no.02
02.12.2022

Record is put up today by put up petition filed by the plaintiff for hearing of the petition under Order 39 Rule 1 read with section 151 CPC.

The plaintiff by filing the instant petition under Order 39 Rule 1 read with section 151 of the CPC supported by an affidavit makes the prayer for :-

1. Ad-interim temporary injunction against the defendant nos.1 to 6 for dispossession from the suit property as well as for disturbing the possession in the said suit property;
2. Ad-interim temporary injunction against the defendant nos.1 to 6 for illegal threat for dispossession from the suit property; and
3. Ad-interim temporary injunction against the defendant nos.1 to 6 for illegal change of nature and character of the suit property;

The Ld. Advocate for the plaintiff by referring to the plaint as well as the injunction application submitted before the Court that the previous owner of the suit was Rajendranath Biswas. The said Rajendranath Biswas sold out the said suit property to plaintiff, proforma defendant no.7 and the predecessors of the defendant nos.1 to 3 namely Swapan Kumar Ghosh and Bijoy Kumar Ghosh by a registered deed being no.3302 of the year 1975. While the plaintiff, proforma defendant no.7 and the predecessors of the defendant nos.1 to 3 were owning and possessing the suit property in ejmali having 1/4th share each, made oral partition amongst themselves. While the plaintiff along with his three brothers were owning and possessing the suit property in ejmali, plaintiff started residing at his work place. Taking advantage of the situation i.e. absence of the plaintiff, defendant nos.4, 5 and 6 with help of defendant nos.1 to 3 are trying to possess the plaintiff's share in the suit property forcefully. The defendant nos.4, 5 and 6 are the trespassers and they have no right, title and interest over the suit property. In spite of the fact that defendant nos.4 to 6 are trespassers, they along with other defendants have been forcefully cultivating potatoes in the portion of plaintiff's share and thereby trying to dispossess the plaintiff from the same.

Therefore, if these defendants are not restrained from such overt acts, then the object of filing this suit would be frustrated and the plaintiff would suffer irreparable loss and injury that cannot be compensated.

Hence, the present petition for injunction is ancillary relief to the original suit for partition.

In support of their submission, the plaintiff file documents as per list.

Heard. Considered and perused the case record as well as the documents filed by the plaintiff.

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Issue notice upon the defendants to show cause within 15 days from the date of receipt thereof as to why the plaintiff's prayer for temporary injunction shall not be granted against them.

Considering the facts and circumstances of the case as well as the documents on record, I am of the view that the plaintiff has made out a prima-facie case and if at this stage, his prayer for injunction is refused the same will be defeated by delay and invite multiple proceedings. In my opinion, the facts narrated by the plaintiff warrant intervention of this Court for the purpose of restraining impending mischief over the suit property. In this instant, I am of the view that refusal of ad-interim injunction would invite greater injustice than grant of it would involve. The balance of convenience and inconvenience in this particular situation tilts in favour of the present plaintiff, as such I am inclined to allow the prayer for ad-interim injunction until the rights of parties are conclusively determined.

Hence, it is

ORDERED,

that the parties (plaintiff and defendant nos.1 to 6) are directed to maintain status-quo in respect of the nature, character and possession of the suit property as on this day till 22.12.2022.

Plaintiff is directed to comply with the provisions of Order 39 Rule 3(a) and 3 (b) at once and put in urgent requisites.

The plaintiff has filed another petition praying for return of the original documents.

Let the same be returned to the Ld. Advocate appearing on behalf of the plaintiff on proper acknowledgement of receipt against the order sheet.

To date for S/R and appearance.

Dictated & corrected by,

Civil Judge (Sr Divn), 2nd
Additional Court, Burdwan

Civil Judge (Sr Divn),
2nd Additional Court, Burdwan.