

T.S. 424 of 2022 (CIS: 424 of 2022)
CNR:WBEM0A001030 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 30-11-2022 :

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 plaintiff.

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 by one Sudarshan Debnath in the year 1999, the plaintiff had acquired right, title, interest in respect of 1/5th share in the 'Ka' schedule property comprised in suit plot no.1151 measuring 04 decimals and thereafter, recorded his name in the present Record of Rights and has been paying government rents and taxes but the defendant no.1 who is a co-sharer with the plaintiff with regard to the 'Ka' schedule property is at present changing its nature and character by making construction of residential houses over the same.

The plaintiff has filed the original Title Deeds executed in his favour by his vendor Sudarshan Debnath in respect of the 1/5th share in the 'Ka' schedule property along with L.R.R.O.R and rent receipt standing in his name from which it prima facie appears that the plaintiff has acquired the said share in the 'Ka' schedule property and is having right, title, interest and possession therein. The plaintiff has also filed plot information in respect of suit plot no.1151 from which it also prima facie appears that the defendant no.1 is a co-sharer along with the plaintiff with regard to the undivided 'Ka' 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 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. 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 as on this date **till 06-01-2023 (intervening Winter Vacation from 26-12-2022 till 01-01-2023).**

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, **(01-07-2023)** for S/R and A/D.

D/C by me.

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

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