

Order No. 02

Dated: 15.02.2023

The record is put up by petition.

Put up is considered and allowed.

It transpires from the report of the Serestadar, that there is no caveat pending in this case.

Ld. Advocate for the petitioner's files moves an application under order 39 rule 1 and 2 read with Section 151, CPC on the ground mentioned in the application.

From the reading of the plaint and the petition at hand it appears that the present suit is for declaration that "B" schedule deed is fraudulent, inoperative, collusive, colorable and void. It is alleged by the plaintiff that after death of their father, his mother and the defendant and him became the owner of the scheduled "A" property to the share of 1/3rd each. However, he came to learn that the defendant by execution of the "B" scheduled Deed by their mother, has become the owner of the same.

He has stated that his mother was in a bed ridden condition for the last 14 years and was not in stable mind to understand what she was doing. It is further alleged by him that now defendant is trying to change the nature and character of the "A" schedule property by disturbing the peaceful possession of the plaintiff therefrom. Hence, the present suit and the plaintiff prays for ex-parte order of injunction against the defendant.

The plaintiff has annexed some Deeds before this court whereby his mother along with his father has purchased portions of the suit property. On perusal of those, it appears that mother of the plaintiff and the defendant was competent enough to understand and necessary formalities of making of the Deed. And as such, the contention of the petition that she was an illiterate lady, does not stand. Moreover, no medical documents regarding her mental health has been produced before this court.

Thus, considering the aforesaid observation, this Court is not inclined to allow the present prayer of the petitioner, without according the defendant a chance of being heard.

Hence the prayer of the petitioner is hereby considered and refused at this stage.

Issue notice upon the defendant showing cause within 15 days from the date of receipt of the notice, as to why an order of interim injunction shall not be granted against her.

The plaintiff is directed to comply with the provisions under O. 39 R. 3(a) & (b) of the CPC.

The plaintiff is also directed to file the requisites at once.

To date.

D/C by me,

C.J(J.D), Addnl Court,
Berhampore, Msd

Civil Judge(Jr. Divn), Additional Court
Berhampore, Murshidabad