

TITLE SUIT NO.629 OF 2022
CNR No.WBBD040008772022
JO Code-WB01443

ORDER NO. 02 DATED.21.11.2022

Record is put up today on a petition filed by the plaintiffs.

Ld. advocate for the plaintiffs moved the ad interim prayer for injunction.

The suit is filed for declaration and permanent injunction. It appears from the report of the Sheristadar that no caveat is pending in respect of the suit as on this date.

The case of the plaintiffs as found from the plaint is that the schedule 'A' originally belonged to Khudiram Nandi who is the father of the plaintiffs and he has recorded his name in the CS ROR and subsequently by amicable partition Khudiram Nandi and Shiburani Nandi got the suit property as exclusive owner of the same and recorded their name in the RS ROR. While Shiburani and Khudiram Nandi have been enjoying the schedule 'A' of the suit property, they died leaving behind two sons i.e. plaintiff no.1 and 2 and thus, the plaintiffs became owner and possessor of the schedule suit property by way of inheritance and plaintiffs have recorded their names in the LR ROR. The predecessor of the plaintiffs have kept a four feet pathway in the western side of the 'A' schedule property as described in the 'A-1' schedule for ingressing and egressing to the pond situated in the 'A' schedule land which is to be used only by the family members. The defendants having no right, title or interest over the schedule property with the help of some anti-social elements have been threatening to dispossess the plaintiffs and also of extending the four feet pathway in the 'A-1' schedule property into 12 feet for the purpose of entry and exit of tractors and carts and are forcibly trying to change the nature and character of the same. Finding threatened by the invasion of the defendant by which a cloud has been casted upon the title and possession of the plaintiffs, they have filed this suit.

Hence, the plaintiff filed this suit praying for a decree declaring that the plaintiffs are the absolute and rightful owners of the suit land including the right of peaceful possession unhindered occupation and enjoyment of the 'A' and 'A-1' schedule suit land, a decree for declaration that the defendant has no right, title and interest over the suit land, a decree for permanent injunction restraining the defendant and his men and associates from changing the nature and character of the 'A' and 'A-1' schedule suit land by interfering with the peaceful possession of the present plaintiffs, a decree for permanent injunction, any other relief or reliefs for which the plaintiffs are entitled.

Perused the petition and the documents submitted by the plaintiffs which includes original LR ROR of khatian no.1231 in the name of Madhusudhan Nandi and LR ROR of khatian no.889 in the name of Pareshnath Nandi, attested RS ROR in the name of Pareshnath Nandi of khatian no. (kri) 889 and Madhusudhan Nandi of khatian no.(akri)555, certified attested copy of LR ROR of khatian no.213, rent receipts in the name of Pareshnath Nandi and Madhusudhan Nandi of LR khatian no.889 and 1231.

I have carefully perused the plaint, the injunction application and the documents filed. Plaintiffs by virtue of filing the above noted documents have established prima facie case in their favour to some extent but this Court is not satisfied as no document regarding the 04 feet pathway have been produced before this Court to prove its existence. At the same time, this Court also holds that at this moment the

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defendant appears to be a complete foreigner over the suit property.

There is no solid prima facie case as such against the defendant and it is a matter of trial. The balance of convenience and inconvenience though is in favour of the plaintiffs and it will not cause any irreparable loss to them which cannot be compensated in terms of money.

I do not find any urgency in the matter at this stage and the documents produced by the plaintiffs does not clearly define the matter relating to the usage of the road and this Court considers that for determining the actual position relating to the 04 feet pathway, it is important to give opportunity of being heard to the other side.

Accordingly, without hearing both the sides, it will not be wise to grant injunction at this nascent stage.

As such, I am not inclined to pass any ad interim order of injunction in the suit.

Hence, it is

ORDERED

that the prayer for ad interim injunction made under Order XXXIX Rule 1 and 2 read with Section 151 C.P.C. is hereby considered and refused at this stage.

However, issue notice upon the defendant directing him to show cause within 15 days from the date of receipt of this notice as to why the temporary injunction shall not be granted against them.

Fix **07.01.2023** for S/R and requisites.

Later:

Record is taken up for passing order under O.39 R.7 of C.P.C dated 18.11.2022.

Record is taken up for hearing the petition under Order 39 Rule-7 of the CPC.

Heard for the plaintiffs in full. Perused the record. In the considered view of the Court, the instant petition is required to be allowed for proper appreciation of the dispute in hand and for the reason that the inspection report may come in aid for just disposal of the suit and injunction application and thereby mitigating substantive justice.

By filing that petition plaintiff prays for an order appointing an advocate Commissioner to inspect the land described in the schedule of the petition dated 18.11.2022 and carry out the commission work as per the points for holding local inspection specified in the petition under Order 39 Rule 7 read with Section 151 of CPC.

In the opinion of the Court, the points that are being forwarded for the inspection, do not appear to be an attempt of fishing out of evidence looked from this stage of the case.

In view of such circumstances, this Court intends to pass the following order--

ORDERED

That let **Molla Md. Samim**, learned Advocate of the Burdwan Bar Association be appointed as the learned Pleader Commissioner for the purpose of this case.

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His fees, considering the work and distance is fixed at **Rs.3,500/-**, to be paid by the plaintiffs to the learned pleader commissioner within 15 days hereof, hand to hand.

Writ will be issued on payment of fees.

On receipt of writ the learned commissioner is required to do the needful inspection in respect of the points as stated in the petition, after duly notifying the parties and/or their respective pleaders.

The learned commissioner is requested to submit his report by the next date positively.

The plaintiffs are directed to submit the relevant papers within 15 days hereof failing which necessary orders shall be passed.

The petition under order XXXIX Rule 7 of the Code of Civil Procedure is, thus, disposed of without contest and without any costs.

To date for commissioner's report and steps by the plaintiffs in the meantime.

Dictated & Corrected by me.

**Sd/-
TRIASHA BANERJEE
CIVIL JUDGE (JR. DIVN.), 4TH COURT
BURDWAN**

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