

TS 190/2022  
CIS TS 190/2022  
CNR: WBWM090002632022

Order No. 02  
04.11.2022

Record is taken up for hearing the ad-interim petition.

The plaintiff has filed a petition under order 39, R- 1 & 2 of CPC praying for ad-interim injunction.

The record is taken up for hearing the ad- interim injunction petition.

Heard Ld. Advocate for the plaintiff.

Seen the endorsement, that no caveat is pending in regard to this matter.

The brief facts of the plaintiff's case is that the suit property as mentioned under the schedule of the plaint and the petition is under Mouza- Bhurkundi, J.L No.- 128, L.R Khatian No.335 and 306, R.S Plot No. 213 and L.R Plot No.213, an area of 69 decimals and R.S and L.R Plot No.190 , an area of 19 decimals, R.S and L.R Plot No. 13 decimals with the suit valued at Rs.100/-.

The area of 63 decimals in Plot No. 213 originally belonged to Sarala Bala Mahata and Bimal Kumar Mahata. Then on 25.07.1958, the property was sold to Kamal Mahata by way of registered sale deed no. 1971 and even handed over the possession. The area of 70 decimals in Plot No. 213, the area of 37 decimals in Plot No. 190 and an area of 25 decimals in Plot No. 197 belonged to Bilashi Mahata. Then she sold the property, along with other properties to Kamal Mahata and Amal Mahata by way of registered sale deed no. 2904 dated 04.07.1968. Amal Mahata and Kamal Mahata amicably partitioned the purchased property and were in possession of their respective share. Thereafter, Kamal Mahata died leaving behind his son Toton Mahata and daughter Dipti Mahata. Then Toton Mahata sold an area of 34.5 decimals in plot no. 213 along with other properties to the plaintiffs by way of registered sale deed no. 2796 dated 07.11.2019. Thereafter, Toton and Dipti sold their share in the suit property to the plaintiffs by way of registered sale deed no. 313 dated 28.01.2021 and even handed over the possession. The principal defendants have no right, title and interest in the suit property. They have been trying to encroach the property of the plaintiffs. Then on 31.10.2022 the principal defendants threatened to oust the plaintiffs from the suit property. Hence, this application.

Perused the entire case record, sale deeds and LR Khatian and other documents filed by the plaintiffs.

For any person, to get a relief under order 39 of CPC, it is a bounden duty upon him to prove the following three things: 1) Prima facie case in his favour 2) balance of convenience and inconvenience 3) irreparable loss and damage.

But, it is settled principle that, a good title by itself does not mean a prima facie case to grant an injunction. A prima facie case means such a cause of action which gives rise for a good case to go for a trial.

The plaintiff has claimed to be in possession of the suit property. He has stated that he purchased the property from Toton and Dipti Mahata who inherited the property from their father Kamal Mahata. The plaintiff has also furnished the LRROR and the chain deeds of his vendors and the predecessors of the vendors in support of his assertion.

From the record and the chain deed it can be presumed that the plaintiff had legally purchased the property from the previous owners.

The ROR is also in the name of the plaintiff which prima facie raises a presumption of possession in favour of the plaintiff. Whether the vendors had the right to sell the property or not shall be appreciated at the stage of trial. But, prima facie the plaintiff has been able to prove his case. If the plaintiff is ousted from the property at this stage, it will not only cause inconvenience but he will suffer irreparable loss and injury.

Considering all the facts and in view of my discussion above, and considering the urgency of the matter, I am of the considered opinion that, at this interim stage an order the ad-interim petition should be allowed for the preservation of the property in its natural state.

Hence, it is

#### ORDERED

that the ad-interim injunction petition filed under order 39, Rule 1 & 2 read with Section 151 of C.P.C is allowed, without cost till next date.

The principal defendants no. 1 to 6 are directed not to interfere in the peaceful possession of the suit property by the plaintiff and not to change the nature, character and title of the suit property till the next date.

The principal defendants no. 1 to 6 are directed to file show cause within 10 days from the date of receipt of notice as to why order of temporary injunction shall not be passed in favour of the present plaintiff.

The plaintiff is directed to file requisite at once after all the precautions of sanitisation due to the Covid-19 pandemic, as per the guidelines.

Let the summons be issued upon all the defendants, following all the guidelines of the Government for the Covid-19 pandemic.

Suit clerk to do the needful.

To 02.01.2023 for S.R, W.S and W.O.

D & C

Sd/-  
Smt. Dewyani Rai  
Civil Judge (Jr. Divn.)  
JO Code: WB01175  
Jhargram