

T.S No. 751 of 2022 (R)
CNR No. WBWM 04-001160-2022
J.O. Code.WB01462

Order No. 06

Dated 17.04.2023

Today is fixed for passing order.

Both parties files hazira.

Heard and considered the submissions of the Ld. Counsels of both the parties.

Vide this order this court shall dispose off an application under order 39 rule 1 and 2 and order 39 rule 4 C.P.C .

Shorn of the unnecessary details, the plaintiffs have instituted the present suit of declaration and injunction against the defendant in respect of land described in the schedule of the application. The plaintiffs made the instant application of temporary injunction under Order 39 Rule 1 and 2 praying to restrain the defendants from peaceful possession of the plaintiffs over the schedule suit property and from creating third party interest over the suit property.

The plaintiffs' case is that the plaintiffs acquired the suit property by way of gift deed from their father. They recorded their name in LRROR and also converted 10 decimal of land in bastu and constructed house over it. The allegation is that the defendant is trying to dispossess the plaintiffs by disturbing them of their peaceful possession over it.

Per contra, the defendant appeared and filed his written objection wherein he vehemently denied all the contentions of the plaintiffs.

The defendant's case is that the suit property is a joint property of the defendant and the father of the plaintiffs in equal shares as they jointly purchased the property vide sale deed no. 3096/1980. However, the property was never partitioned in metes and bounds between the defendant and the father of the plaintiffs and therefore the defendant filed a partition suit before Ld. Civil Judge (Sr. Divn.), 3rd Court, Paschim Medinipur being no. TS 200/2022. The defendant further states that the father of the plaintiffs in the meantime transferred his undivided share to the present plaintiffs and therefore the suit may be dismissed and the ad interim order may be vacated as it has been obtained procuring the fact of suit of partition pending before court of law.

Heard and considered.

On perusal of the material on record it appears that the fact of a partition suit over the suit property before a court of law is suppressed by the plaintiffs. The searching slip produced by the defendant supports the fact that the plaintiffs have willfully suppressed certain facts and therefore there is a need to vacate the ad interim order. Resultantly, the ad interim order is vacated.

The court proceeds to decide the temporary injunction application filed by the plaintiffs.

Order 39 rule 1 and 2 C.P.C deals with a power to grant interim relief. The relief of an ad interim injunction is a discretionary relief. Temporary injunction can be granted to a party on its own risk and responsibility as in case he loses the case, he cannot take any assistance of the interim order granted by the court. Reliance is placed on **Rajasthan housing board v. Krishna Kumari, 2005 13 scc 151.**

While exercising the discretion the court normally applies the following test;

- i. *Whether the petitioner has a prima facie case;*

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- a. *Whether the contention of the party in the suit appears to be plausible i.e. whether the suit on the part of applicant has some substance in it so as to continue further. At this stage, the merits of the case are not examined.*
- b. *Whether the allegation on the basis of which the application has been made are prima facie plausible.*
- ii. *Whether the balance of convenience lies in favor of petitioner; and*
- iii. *Whether the petitioner would suffer an irreparable injury if his prayer for interlocutory is disallowed..."*

Keeping in view the legal principles culled out above with regard to grant of interim injunction, the court after perusing the pleadings find that apparently the father of the plaintiffs and the defendant has jointly purchased the property vide sale deed being no. 3096/1980 and there is a partition suit filed by the defendant. The court also finds that the father of the plaintiff has transferred undivided share to the plaintiffs by way of gift. The present suit being a declaration suit is substantially different from a suit of partition and therefore the questions before this court makes the place fit to go for trial. What is important in such situation is the preservation of the suit property so that the object of the suit remains intact. Consequently, the court orders both the plaintiffs and the defendant to maintain status quo with regard to the suit property. None of the plaintiffs or the defendant shall create a third party interest with regard to the suit property till final disposal of the suit.

Hence, it is,

ORDERED

The court directs both the plaintiffs and the defendant to maintain status quo with regard to the suit property. None of the plaintiffs or the defendant shall create a third party interest with regard to the suit property till final disposal of the suit.

To **11.10.2023** for framing of issues. Parties are at liberty to file their suggested issues.

Civil Judge(Jr. Divn.) 2nd Court,
Paschim Medinipore