

IN THE COURT OF THE CIVIL JUDGE (JR. DIV.), KALIMPONG

(Present: Diti Bhattacharjee, J.O. Code- WB01365)

T.S. No. 22/2025 (CIS No. 16 of 2025)

CNR No. WBDJ08-000487-2025

Order no. 02

06/11/2025

Today the record is placed before me.

Ld. Advocate for the plaintiffs wants to move the petition for an order of ad interim injunction U/O 39 Rule 1 and 2 read with section 151 CPC.

No caveat is pending in this case as per the report of the Sheristadar.

Heard the Ld. Advocate through.

Now, the record is taken up for passing order.

This is a suit for declaration, recovery of possession and permanent injunction.

-: Case of the Plaintiffs:-

The case of the plaintiffs in a nutshell is that the plaintiffs are the owners and occupier of the 'A' Schedule property. The 'B' Schedule property is the part and parcel of 'A' Schedule property which is a vacant piece of land as has been left by the plaintiffs in their southern side as per Municipal Rules. The house of the defendant no.1 is situated in the southern side of the plaintiffs' house. During the puja vacation, the plaintiffs were out of station for some days and on returning, the plaintiffs discovered that the defendant no. 1 has encroached the entire 'B' schedule land by removing the iron pillars and barbed wire and shifted the same to the wall of the plaintiffs' house. The defendant no.1 has also made illegal construction over the 'B' Schedule land. The plaintiff immediately requested the defendant no.1 for removing the illegal construction over the 'B' Schedule property but were in vain. Thus, finding no alternative, the plaintiff instituted this suit and now praying for an order of ad-interim injunction for restraining the defendant no.1.

Documents submitted:-

The plaintiffs in support of their has not submitted any original documents and only filed some documents in the form of photocopies at the time of filing the case by making firisti.

Decision with Reasons:-

Now, the Court has to decide whether on the basis of the documents submitted by the plaintiff as well as from the verbal submission, this Court can grant an ex parte order of ad interim injunction in favour of the plaintiff.

Now, as the plaintiffs have not filed any original document before the Court in support of their case, it is impossible for the Court to ascertain that the plaintiff is the owner and occupier of 'A' and 'B' Schedule property and the 'B' Schedule is the part and parcel of 'A' Schedule land. No document is there to that effect. Further no document is filed by the plaintiffs showing the urgency in the matter. So, at this stage the Court is of the opinion that it would not be prudent to pass an order of ad-interim injunction without giving an opportunity to the defendant no.1 of being heard.

Therefore, at this stage, finding no prima facie case and urgency in favour of the plaintiffs at this stage, the Court is not inclined to allow the present application.

Hence, it is

ORDERED

That the present application U/O 39 Rule 1 and 2 read with section 151 CPC for ad interim injunction be and the same is hereby refused ex-parte at this stage .

Issue notice upon the defendant no 2 to call upon him to show cause within 15 days from the receipt of such notice as to why the prayer of the plaintiffs for an order of temporary injunction shall not be granted.

To date.

Dictated & Corrected by me,

**Civil Judge (Jr. Div.), Kalimpong
JO CODE WB01365**

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