

Title Suit No. 01 of 2023
CIS No. 01 of 2023
CNR No. WBBK07-000001-2023
Present : Sri Tanumoy Karmakar (J.O. Code: WB01209)

Order no. 16
Dated 12-02-2025

Today is fixed for hearing injunction petition filed under Order 39 Rule 1 & 2 of the CPC and petition filed under Order 39 Rule 4 of the CPC as well as payment of cost by the defendant.

Memorandum of appearance filed by the plaintiff and defendants.

Cost has not been paid.

However, the case record is taken up for injunction hearing and hearing of application filed under Order 39 Rule 4 of the CPC for speedy disposal of the suit.

Heard Ld. Counsels for both sides at length.

Perused the applications as well as W.O.s.

Now the case record is taken up for passing necessary order.

The brief facts of the plaintiff's case is that the defendant no.1 to 3 have owned and possessed the rest 2/3rd share in respect of 'A' schedule property with the plaintiff jointly and amicably. Now, the defendant no.1 to 3 are trying to make construction illegally and forcefully by taking law in their hands over valuable portion of the 'A' schedule property without partition the same as per provision of the law and also without changing the classification of land as per Section 4C of W.B.L.R. Act. This kind of illegal and forceful attempt of the defendant no.1 to 3 may change the nature and character of the undivided 'A' schedule property which is jointly and amicably possessed by the plaintiff and defendant no.1 to 3.

On the other hand, Ld. Counsel for defendants filed written objection and denied as well as disputed the allegations put by the plaintiff except the matter of record. The specific case of the defendants is that defendants being co-sharers have filed a preemption case under Section 8 of the W.B.L.R. against the stranger purchaser, being plaintiff of this instant suit. The said preemption case was pending before the Ld. Civil Judge (Junior Division), Bishnupur being J.Misc. Case no.04 of 2023 on deposit of consideration money of the sale deed no.010704676 for year 2022. It has been further averred by the defendants is that there is no *prima facie* case at all in favour of the plaintiff and prayed for rejection of the temporary injunction application.

During course of submission Ld. Counsel for the plaintiff submitted the certified copy of deed by which the plaintiff became the owner of the suit property. Ld. Counsel for the plaintiff also filed photocopy of L.R. R-o-R records which reflects that plaintiff is the one of the co-owner and co-sharer of the suit property.

On perusal of application, materials on record and documents filed by plaintiff apparently it appears that plaintiff and defendants are co-owners in the suit property. There is jointness of title of the plaintiff and defendants. The property is not partitioned in metes and bounds as accepted by the defendants. There are triable issues which makes a *prima facie* case in favour of plaintiff. In view of the allegations raised by plaintiff, I am of considered opinion that the balance of convenience and inconvenience is tilted in favour of plaintiff. In this context, it is also pertinent to mention here that if defendants manage to change the nature and character of the unpartitioned suit property, then plaintiff will suffer irreparable loss of injury. It is also pertinent to mention here that if the preemption case succeeds then undoubtedly defendants will take the place of the plaintiff herein. Considering the nature of dispute and to avoid future complications which may give rise to multiplicity of proceeding, I am inclined to grant an order of injunction.

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Hence, it is,

ORDERED,

that injunction application preferred by the plaintiff under Order 39 Rule 1 & 2 of the CPC is allowed on contest without any order as to costs.

Accordingly, both parties are directed to maintain 'status quo' in regard to their present status of respective possession over the suit property till the disposal of the suit. The defendants, their men, agents and associates are hereby restrained from alienating the suit property or any portion thereof to any third person till the disposal of the suit.

In a sequel of this order the application filed under Order 39 Rule 4 of the CPC is hereby rejected on contest, but without any order as to costs.

Fix **18-03-2025** for framing of issues.

Suggestive issues, if any, in the meantime.

Update CIS forthwith.

Dictated & Corrected by me.

Civil Judge (Sr. Divn.), Bishnupur

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