

Title Suit No. 51 of 2023

CIS No. 51 of 2023

CNR No. WBBK07-000137-2023

Present : Sri Tanumoy Karmakar (J.O. Code: WB01209)

Order no. 18

Dated 13-08-2025

Today is fixed for hearing of injunction application including application filed by defendant no.1 under Order 39 Rule 4 of the CPC as well as W.S. by defendant no.9 & 11.

Memorandum of appearance filed by the plaintiff and defendant no.1.

Defendant no.9 & 11 are absent without any steps.

None appears on behalf of them inspite of repeated calls.

Accordingly, show-cause by defendant no.9 & 11 as to why the instant suit shall not be proceeded as ex parte against them.

Now, the case record is taken up for hearing the temporary injunction application including application filed by defendant no.1 under Order 39 Rule 4 of the CPC.

Heard Ld. Counsels for both sides at length.

Perused the temporary injunction application as well as W.O. filed by defendant no.1.

I have also perused the application filed by defendant no.1 under Order 39 Rule 4 of the CPC and W.O.

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

The brief facts of the plaintiff's case is that the plaintiff and defendant no.1 to 20 are co-sharers of suit plots stated under 'A' and 'B' schedule properties where 'A' schedule property is ancestral property of plaintiff and defendant no.1 to 20 who have inherited from Sekh Najar. It is also stated by the plaintiff that erstwhile owner Sekh Najar had three daughters and four sons only legal heirs namely, Sekh Sakhina, Moulada Bibi, both are now deceased and Sekh Morjina is defendant no.12 in this case and Sekh Kalo, Sekh Abdul both are now deceased, Sekh Nuro (defendant no.13), Sekh Ali (defendant no.14). It is also stated by plaintiff that defendant no.2 to 6 only legal heirs of Sekh Sakhina being three sons. Defendant no.7 to 11 are only legal heirs of Moulada Bibi. It is also stated by plaintiff that plaintiff no.1 is entitled to get 2/3rd of 0.1818 share and defendant no.1 is entitled to get 1/3rd of 0.1818 share from suit plots of Sekh Kalo stated in the 'A' schedule property. It is also stated by defendant no.21 is a stranger to the suit plots stated 'B' under 'A' schedule below. The further fact of the plaintiff's case is that the plaintiffs have entreated several times to the defendant no.1 to 20 for partitioning of the suit plots by metes and bounds amicably, but those defendants are not paying heed to the plaintiff's offer or partitioning of the suit plots amicably by metes and bounds. It has been again alleged that defendant no.21 has raised illegal and unauthorized construction in blatant violation of order passed by the Ld. Executive Magistrate of SEDM Court, Bishnupur in connection with M.P. Case no.564 /MP/2022 over suit plot no. 567 of said case which is also suit plot.

On the other hand, Ld. Counsel for defendant no.1 denied and disputed the material allegations as alleged by the plaintiff except the matter of record. The specific case of the defendant no.1 is that the other co-owners of the 'A' schedule property had transferred some portion of 'A' schedule property by way of a gift deed bearing no. 48 for the year 2020. It has been further averred by defendant no.1 is that the co-owners of 'A' schedule property also transferred some portion of 'A' schedule property in favour of husband of defendant no.1 by dint of a registered sale deed for the year 2014. Accordingly, defendant no.1 contended that plaintiff has no right, title and interest in respect of the 'A' schedule property. It has been further upheld by the defendant no.1 that the husband of defendant no.1, namely, Sk. Nijam was not made a party in this suit, though he has share in respect of the 'A' schedule property.

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Per contra, Ld. Counsel for the plaintiff submitted that the facts as alleged by defendant no.1 is not mentioned in the pleadings of defendant no.1. However, defendant no.1 has not denied pertaining to the fact of partition between the plaintiff and other co-sharers in respect of the suit properties. The deeds submitted by defendant no.1 do not reflect that defendant no.1 and her husband became the absolute owner of the 'A' schedule property.

However, on perusal of application, materials on record and documents filed by plaintiff apparently it appears that plaintiff and defendant no.1 are the co-owners in the suit properties. There is jointness of title of the plaintiff and 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 on the basis of the documents filed by the plaintiff at the time of hearing of the ad interim injunction application. In this context, it is also pertinent to mention here that if defendants manage to dispossess the plaintiff from the unpartitioned suit property, then plaintiff will suffer irreparable loss of injury. 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.

Hence, it is,

ORDERED.

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

Accordingly, defendant no.1, her men, agents and associates are hereby restrained from alienating the suit properties or any portion thereof to any third party till the disposal of the suit.

It is pertinent to mention here that defendant no.21 did not contest the suit and it has been alleged by the plaintiff that defendant no.21 is trying to raise illegal and unauthorized construction over the suit plots.

Accordingly, I have no impediment to grant the prayer of the plaintiff which has been claimed against defendant no.21.

Therefore, defendant no.21, his men, agents and associates are hereby restrained from changing the nature and character of 'A' & 'B' schedule properties in any manner whatsoever till the disposal of the suit.

In sequel of this order, the petition filed under order 39 Rule 4 of the CPC is hereby partly allowed, but without any order as to costs.

Fix **29-10-2025** for show-cause by defendant no.9 & 11.

Update CIS forthwith.

Dictated & Corrected by me.

Civil Judge (Sr. Divn.), Bishnupur

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