

L.R. Misc Case – 07 / 2022 (CIS – 07 /2022)

CNR WBHW 07 000076 of 2022

Order No. 2 dated 30.06.2022

Today is fixed for S.R. / Appearance of the OPs.

Petitioners are present.

From the case record it is revealed that requisites have already been filed by the petitioners. Accordingly, the Dealing Assistant is directed to issue the summons upon the OPs at once.

An injunction application u/O 39 Rule 1 & 2 C.P.C. read with Section 151 C.P.C. has been filed by the petitioners praying for an order of ad interim injunction against OP Nos. 1 & 2.

Ld. Advocate moves the said injunction application on the ground of urgency.

As per the note given by the Sherestader there is no caveat pending in connection with the subject matter of the present case. Accordingly the application for ad interim injunction is taken up for consideration.

This an application u/S 8 read with Section 9 of the W.B.L.R. Act.

The case of the petitioners as made out by their Ld. Advocate at the time of the hearing of the ad interim injunction application briefly is that the subject matter of the present case, which has been described in detail in the 'A' schedule of the instant application originally belonged to OP No. 3 Rina Panja who was the exclusive owner of case plot No. 838. Subsequently she transferred the 'A' schedule property to OP Nos. 1 & 2 vide registered sale deed No. 051002052 of 2019.

It is the case of the petitioners that the case property is situated contiguous to their plot of land being non-case plot No. 837. The further case of the petitioners is that they share the longest common boundary with the case property as the owners of contiguous plot No. 837. Despite this, OP No. 3 transferred the 'A' schedule case property to principal OP Nos. 1 & 2 vide the said sale deed for a consideration of Rs. 1,80,000/- who are stranger purchasers in respect of the 'A' schedule case property. The petitioners have further claimed that the 'A' schedule property was sold by the aforesaid OP No. 3 to OP Nos. 1 & 2 without giving any notice to the petitioners. In fact, the petitioners became aware of the aforesaid conveyance on obtaining a certified copy of impugned sale deed. After purchasing the 'A' schedule property the OP Nos. 1 & 2 are attempting to make illegal construction on the case property, it has been claimed by the petitioners. When the petitioners tried to prevent them from doing so then the said OPs threatened that they will forcibly take possession of the 'A' schedule property very soon and shall also change its nature and character by making construction on it. Besides this they also threatened to transfer the case property to a third party if they are prevented from undertaking construction work on the same. Hence, the petitioners were compelled to file the present application u/O 39 R 1 & 2 C.P.C. read with Section 151 C.P.C. praying for ad-interim order of injunction from this Court.

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The petitioners have filed with firstly list of documents which are herein referred to as annexures. From the material on record and the annexures filed by the petitioners including the photocopy of the impugned sale deed and the LRROR relating to plot No. 837 and original sale deed No. 622 of 1988, it appears that the petitioners have a definite pre-emptory interest in the 'A' schedule case property. It is pertinent to mention here that the petitioners have already deposited the entire consideration amount as mentioned in the impugned sale deed along with compensation money payable @ 10% of the said consideration amount vide proper challan. The said original challan has also been filed by the petitioners. Let the said original challan be kept in the record with a direction upon the Dealing Assistant to make necessary entries in the relevant register concerning the said challan.

Considering the nature of the case, the balance of convenience and inconvenience as well as the urgency involve in the matter, this Court is of the view that if the relief of injunction in ad-interim form is refused at this juncture then the very object of the present application would stand defeated by delay.

Hence it is,

ORDERED

That the prayer for ad-interim injunction is allowed. The OP Nos.1 & 2 are hereby restrained from making any addition or alteration or changing the nature and character of the 'A' schedule property by making construction over any portion of the same. In addition to this the OP Nos. 1 & 2 are further restrained from transferring or alienating any portion of the 'A' schedule property in favour of any third party till the disposal of the temporary injunction application.

Issue notice upon the OP Nos. 1 & 2 calling upon them to show cause within ten days from the date of receipt of the said notice as to why the application for temporary injunction filed by the petitioners shall not be allowed and an order of temporary injunction shall not be passed against them.

Petitioners are directed to comply the provisions of Order 39 Rules 3 (a) & (b) of the C.P.C. at once.

Petitioners are further directed to file requisites immediately.

To 30.07.2022 for filing show cause by the OP Nos.1 & 2 as well as S/R appearance of all the OPs.

D/C by me

C. J. (Jr. Divn.)
Amta, Howrah
(JO Code WB 01195)

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