

**T.S. No. 1090 of 2019**

**Order no. 3**

**14.08.2019**

As per order of this today is fixed for hearing the injunction application filed by the plaintiff. Accordingly, Ld. Lawyer for the plaintiff moves the petition under Order 39 Rule 1 and 2 read with Section 151 of the CPC praying for temporary injunction restraining the OP no. 1 and 2 and their agents and servants to make any construction in the suit premises and also prays for injunction order in ad interim nature.

In the margin of the injunction application, the office on 13.08.2019 has reported that no caveat has been filed.

Ld. Lawyer for the plaintiff / petitioner moves the application by submitting inter alia that they are the joint owners of the premises no. 43/F, Nilmani Mitra Street, Kolkata – 6 under P.S., Burtalla and the said premises is originally G+2 storied building. The defendant nos. 1 and 2 are the joint owners of the premises no. 44/1, Nilmani Mitra Street originally one storied building. And this premises is adjacent to the premises of 43/F, Nilmani Mitra Street owned by the plaintiff.

It is further submitted that defendant nos. 1 and 2 on first of September 2018 started illegal construction on premises no. 44/1, Nilmani Mitra Street without any sanction and without making proper boundary plaintiff's previous position and thereby causing obstacle of the nature air and light to the plaintiff and defendants also by way of constructing multi-storied building, has been constructing the privy in the second floor of 44/1, Nilmani Mitra Street which is just side of the plaintiff's bedroom and causes inconvenience to the plaintiff illegally and without any sanction from the KMC.

Accordingly, plaintiff prays for ad interim order of injunction restraining the defendants and their men and agent to stop the construction upon the suit schedule property. The plaintiff has annexed the KMC property tax receipts, one judgment dated 29.10.1990 of Appeal no. 69 of 1983-84 passed by KMC, Building Tribunal, a copy of the complaint to the KMC etc.

I have carefully gone through the plaint, injunction application and annexures thereto.

It prima facie appears that plaintiffs are the joint owner of the premises no. 43/F, Nilmani Mitra Street and defendant nos. 1 and 2 are the joint owners of the separate premises no. 44/1, Nilmani Mitra Street which is suit schedule property and the same is adjacent to the premises of the plaintiffs. Other defendants are the Municipal Authority.

Having considered the injunction application, annexures and materials on record, I hold that there is no strong prima facie case in favour of the plaintiff and I find no such urgency to pass any order exparte without hearing of other side. So, prayer for ad

interim injunction stands refused at this stage.

Issue notice calling upon the defendants asking them by way of show-cause within 15 days from the date of receipt of the notice as to why the order of injunction as prayed for shall not granted against them.

To 05.09.2019 for S/R, AD and appearance.

Plaintiffs to put the requisites at the earliest.

Dictated & corrected by me:

Judge

Judge