

In the Court of Civil Judge (Jr. Divn.) Gangarampur at Buniadpur
Present: Shahid Parvez
Civil Judge (Jr. Divn.)
J.O. Code: WB01233
T.S 11 of 2018 R 11 of 2018
CNR No. WBDD07-000027-2018

Order No.- 23
08-09-2022

Today is fixed for further hearing, hearing the injunction petition.

Plaintiff files hazira. Ld. Adv. of the plaintiff is present.

Defendants are absent without step. Accordingly, the record is taken up for hearing the petition on the point of maintainability filed by the defendant No.1 on 26-06-2018.

Ld Adv of the plaintiff submitted that the suit is maintainable since the plaintiff has sought for declaration of his ejmali title and permanent injunction against defendants and the suit is maintainable in this court.

This court perused the petition under consideration from which it appears that the defendant No.1 has mentioned therein that the plaintiff has not mentioned the suit value and the cause of action is ambiguous. The ejmali declaration of title is tenable against third party but not against the co-owners. The plaintiff has not brought all the ejmali co-owners in this suit and accordingly, the suit is not maintainable.

In the case of Mohan Vs Bhagirath 1939 MLJ 120 it was held that **the possession of one co-sharer is the possession of all. Hence, a joint co-owner can sue for a declaration of his title as joint owner and injunction restraining the other joint owners from interfering with the enjoyment of this right. It is not necessary for him to sue for possession.**

It was also held in the case of Joynarain Vs Suchitra 26, CWN 206, it was held that **it is not necessary for a co-sharer to seek for partition against a co-sharer and declaration of title in respect of the respective share is maintainable u/s 34 of the Specific Relief Act.**

In view of the above discussions and findings the court holds that the suit is maintainable in this Court and the plaintiff has to prove his case with cogent evidence during trial.

Hence it is hereby,

ORDERED

that the instant petition of non maintainability of suit dated 26-06-2018 is considered and rejected on contest.

Fix 15-02-2023 for ex-parte injunction hearing.

D/C by me

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