

In the Court of Civil Judge (Jr. Divn.) Gangarampur at Buniadpur

Present: Shri Shahid Parvez

Civil Judge (Jr. Divn.)

J.O. Code: WB01233

T.S 29 of 2020, Regd. No.- 29 of 2020

CNR No. WBDD07-000076-2020

Order No. 13

Dated-17-07-2023.

Today is fixed for temporary injunction petition hearing.

Both the parties files hazira. Ld. Advocates of both the parties are present.

Accordingly, the record is taken up.

Plaintiffs by filing the instant petition u/O 39 Rule 1 (a) (b) (c) read with section 151 of the CPC submitted that Mundra Mardi was the previous owner of the suit plot along with the other non suit plot also. He expired leaving behind two sons, Lakhan Mardi and Bhuju Mardi. They possessed their respective property by way of amicable settlement and partition. Lakhan Mardi expired later on leaving behind four sons, Sagram Mardi, Ruben Mardi, Huju Mardi and Bhadu Mardi. They possessed their respective shares. They sold 12.25 decimals out of 42 decimals over LR suit plot No. 300, R.S suit plot No. 193 on 21-05-2019 by sale deed No. 2367 in favour of plaintiff on the eastern side of the suit plot with specific demarcation. Plaintiff possessed the same but in the middle part of the month of June 2020 when the plaintiff was not present in the suit property, defendants tried to take the possession of the same by fencing with bamboo stick and also threatened the plaintiff. Plaintiff obstructed the defendants. The remaining part of 29.75 decimals out of 42 decimals of suit plot belongs to the proforma defendants. Defendant Nos. 1 to 4 have no right, title and interest and possession in respect of the suit property and they have threatened the possession of the plaintiff, hence the suit with a prayer for passing temporary injunction against defendant Nos. 1 to 4 under the instant petition in hand u/O 39 Rule 1 (a) (b) (c) read with section 151 of the CPC.

Ld Adv of the defendant Nos. 1 and 2 raised objection against the injunction application and submitted that they have not tried to dispossess the plaintiff from the suit property in the middle part of June 2020. Plaintiff is not the owner and possessor of 12.25 decimals of suit property. Sufal Mardi used to cultivate the suit property as Bargadar. The court finds that Sufal Mardi was the father of defendant No.7 of this suit. According to defendants Mundra Mardi used to possess the 42 decimals of property and he expired leaving behind two sons, Lakhan Mardi and Bhuju Mardi who inherited the property to the extent of 21 decimals each. Defendant Nos. 2 to 4 and proforma defendant Nos. 5 to 7 are the legal heirs of recorded Bargadar and in view of this, the suit is not maintainable in this court since the jurisdiction of the court is barred under Section 21 (3) of the WBLR Act.

The court considered the submission of both the Ld Advocates at length and also considered the injunction application, plaint and written statement and other available materials on record from which it appears that the dispute has cropped up with regard to the fact that whether the suit has been filed against the Bargadar or against the successors of the Bargadar. In this situation it is pertinent to refer the provision of Section 21 (3) of the WBLR Act, which is as follows :-

Section 21 (3) of the WBLR Act. If any question as to whether a person is or is not a *bargadar* arises in the course of any [suit, case, appeal or other] proceedings before any Civil or Criminal Court, the Court shall refer it to the officer or authority mentioned in sub-section (1) of section 18 for decision and such Court shall dispose of the suit, case, appeal or other proceedings in accordance with the decision communicated to it by the officer or authority mentioned in sub-section (1) of section 18 to whom the question was referred.

Section 18 (1) of the WBLR Act says as follows : -

(1) Every dispute between a bargadar and the person whose land he cultivates in

respect of any of the following matters, namely :-

(a) division or delivery of the produce.

(aa) recovery of produce under section 16A.

(b) termination of cultivation by the bargadar shall be decided by such officer or authority as the State Government may appoint.

Provided that no application for decision of any dispute shall be entertained unless such application is presented to the officer or authority within three years from the date on which the claim falls or becomes due.

After considering the present facts and circumstance and after perusal of the photocopies of the documents, it is forthcoming that the plaintiff has no prima facie case against the defendants and if the temporary injunction is not granted at this stage then the plaintiff will not suffer the irreparable loss and the injury. The balance of convenience and inconvenience does not lean at this stage in favour of the plaintiff.

Hence it is,

ORDERED

that the petition for temporary injunction is considered and rejected on contest against defendant Nos. 1 to 4

The BL&LRO, Gangarampur is directed to submit his report with regard to the status of Bargadar (name of the person) in respect of Mauza-Mahurkismat, J.L No. 118, R.S plot No. 193 and L.R plot No. 300 in respect of 12.25 decimals (eastern side) out of 42 decimals on the said plot.

Let a copy of this order be sent to the BL&LRO, Gangarampur for information and compliance.

Fix 18-10-2023 for report from BL&LRO, Gangarampur.

D/C by me

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