

ORDER NO. 02

DATE: 25.07.2019

A put up petition is filed by the plaintiff today for the reasons stated therein.

Heard. Considering the gravity of the prayer made by the plaintiff the put-up petition is **allowed.**

Another petition is filed by the plaintiff today for hearing of the Temporary injunction application under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure.

Heard the Ld. Advocate for the Plaintiff.

On perusal of the record it appears that Vide Order no.01 dated 20.06.2019 this Court has directed the Defendant no. 1 to file Show cause as to why the Plaintiff's prayer of Temporary Injunction shall not be allowed. S/R is received as duly served dated: 01.07.2019 upon the Defendant no. 1. None appeared on behalf of the Defendants.

Considering the gravity of the prayer for hearing of the application under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure the petition is considered and **allowed.**

The record is taken up for hearing of the temporary injunction application under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure. The Ld. Adv. for the plaintiff submits that hearing of Temporary injunction application is very urgent at this stage; otherwise the plaintiff may suffer irreparable loss and injury.

Ld. Lawyer for the plaintiff moved the injunction application for an order of Temporary injunction.

Heard the Ld. Adv. for the plaintiff. Perused the plaint, petition for temporary injunction under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure and other materials available in the record. Considered.

This is a suit for eviction, declaration of title and permanent injunction and consequential reliefs.

The facts of the case in short is that the Plaintiff, Giren Kumar Das has purchased a land measuring about 02 decimal in the LR Plot No. 858/1196 vide Registered Sale Deed being no. 2546 dated 24/03/2003 from one Rahamatullaya Choudhury. After purchasing the same the Plaintiff's name has been recorded in the LRROR as LR Khatian being no. 1486 in respect to the LR Plot No. 858/1196 measuring about 02 decimal of land. The Plaintiff also stated that he has paid the rent in respect to such LR Plot No. 858/1196. Plaintiff further stated that he used to enjoy and possess the land for different types of business along with his two brothers as mentioned in the schedule of the plaint. One of his brother namely Chandra Das still continuing a cycle repairing business over such land and the Plaintiff also still continuing his business of husking mill over such land according to their portion. But another brother namely, Madhusadan Das to whom Plaintiff has transferred some portion of the said land for the purpose of carrying on some other business, subsequently he has discontinued that business. Now, the Plaintiff alleges that the Defendant no. 1 i.e. Mustafijur Rahaman has forcefully got the possession over such portion of the land and started some business in the first part of month of June, 2018 and the Defendant no. 1 still possessing the same till date. In the second part of June, 2019 the Plaintiff has heard that the Defendant no. 1 is trying to sale the plot of land without having any right, title over the same. Finding no other alternatives, the Plaintiff filed the present suit for eviction, declaration of title and permanent injunction and consequential reliefs before this court for evicting the Defendant no. 1 from the suit plot of land and for restraining the Defendant no.1 from entering and disturbing the peaceful possession of the said land.

The Plaintiff has filed some documents in favour of his contentions:

1. Photocopy of Registered Sale Deed no. 2546 dated 24/03/03.
2. Photocopy of LR Khatian no. Khatian being no. 1486 in respect to the LR Plot No. 858/1196 in the name of Giren Kumar Das.
3. Photocopy of Rent Receipt in respect of the Khatian being no. 1486 dated 18/02/2017.

On careful perusal of the record and the documents present therein it appears that it is a good prima facie case to go into the trial. This is a suit for eviction and the Plaintiff admitted in his plaint that the Defendant no. 1 is in possession over the suit plot of land. Though the Plaintiff primarily raised a presumption of his title and possession over the suit plot of land by submitting the relevant documents in respect to the suit plot of land but without having a clear scenario regarding the present status of the suit plot of land at this stage no restraining order can be passed. Also, from the averments made in the plaint and from the documents filed herewith it appears that the plaintiff has failed to show that he has such an urgency to obtain a restraining order against the Defendants.

Contd.

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Considering such facts and circumstances, the court is of the opinion that the balance of convenience and inconvenience does not lie in favour the plaintiff.

Accordingly, the Court is not inclined to pass any restraining order in favour of plaintiff.

Hence, it is

ORDERED

that the application under Order XXXIX Rule 1 and 2 read with section 151 of the Code of Civil Procedure for Temporary Injunction filed by the plaintiff is hereby considered and rejected on ex-parte without any order as to costs.

To date.

Typed by me

Civil Judge (Jr. Divn.)
Gangarampur at Buniadpur,
Dakshin Dinajpur,
25/07/2019.

Civil Judge (Jr. Divn.)
Gangarampur at Buniadpur,
Dakshin Dinajpur,
25/07/2019.