

Later,

Date: 18.08.2020

The record is taken up for hearing of the ad interim injunction application under Order XXXIX Rule 1(a)(b)(c) read with section 151 of the Code of Civil Procedure. The Ld. Adv. for the Plaintiff submits that hearing of ad interim injunction application is very urgent at this stage; otherwise the Plaintiffs may suffer irreparable loss and injury.

As per report of the Sheristadar no caveat is pending as on this date.

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

This is a suit for Declaration of title (ejmali and permanent injunction).

The case in short is that the Plaintiffs and Defendant Nos. 1 & 2 are brothers and sisters. The father of the Plaintiffs and Defendant Nos. 1 & 2 namely, Chittyaranjan Poddar was a permissive possessor of the suit plot of land and he had taken the permission from the original owner namely, Monsuruddin Ahammed and after the demise of the father of the Plaintiffs and Defendant Nos. 1 & 2, they are enjoying the possession of the suit plot as permissive possessor as a legal heir of their father Chittyaranjan Poddar. Plaintiffs further stated that they are enjoying the possession in ejmali nature along with the Defendants Nos. 1 & 2 but on 25-05-2020, the Defendants with the help of some miscreants forcefully entered into the portion of the Plaintiffs and destructed the boundary wall and on 22-07-2020 the Defendants again along with some miscreants entered into the disputed store of the Plaintiff and assaulted. Plaintiff stated that the Defendants have no right to deny the ejmali right of the Plaintiff. Hence, the Plaintiff prayed for declaration of title and permanent injunction.

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The Plaintiff by filing the injunction application and by filing supporting documents is stating that he has a good prima facie case. Though it is a good prima facie to go into the trial. But from the averments made in the plaint and from the documents filed herewith it appears that the Plaintiff and Defendants are enjoying the suit plot of land (ejmali nature) jointly as the Plaintiffs and Defendants both are the legal heirs of Late Chittayaranjan Poddar who has taken the permission from the previous/original owner Monsuruddin Ahammed and at this stage which portion of the suit plot of land is enjoyed and possessed by the each party is not clear. Before this Court and the fact is also not clarified by any documents produced by the Plaintiffs. Plaintiffs have failed to produce any document regarding their prayer which is the necessary part for considering the prayer of the Plaintiffs at this prima facie stage. At this prima -facie stage, I do not find it proper to allow the prayer of injunction of the Plaintiffs against the Defendant without giving them any opportunity of being heard.

Considering the facts and circumstances, the Court is of the opinion that the balance of convenience and inconvenience is not in favour of the Plaintiff at this stage.

Accordingly, I am not inclined to pass any restraining order against the Defendant nos.1 & 2 in favour of the Plaintiffs at this stage.

Hence, it is,

ORDERED

that the prayer for ad interim injunction under Order XXXIX Rule 1 (a) (b) (c) read with section 151 of Code of Civil Procedure is considered and rejected without costs at this stage.

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The Defendant nos. 1& 2 are directed to show cause within 15 days from the date of receipt of the notice as to why the Plaintiffs' prayer of temporary injunction shall not be allowed against the Defendant nos.1& 2.

Plaintiffs are directed to comply with the provision Order XXXIX Rule 3 (a) & 3(b) of CPC.

Issue notice upon the Defendant nos. 1& 2 at once.

To date.

D/C by me

Civil Judge (Jr. Divn.)
Gangarampur at Buniadpur,
Dakshin Dinajpur,
18/08/2020.

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