

Misc. Appeal – 61/24

J.O. Code : WB01302

Order No. 04 dated 03.10.24

Today is fixed for passing order.

Petitioner has filed hazira on this day.

The record is now taken up for passing order upon the hearing concluded on the last date with respect to the petition filed by the petitioner/appellant under Order 39 Rule 1 and 2 read with sec. 151 of the CPC praying for ad interim injunction.

Ld. Advocate for the appellant moved the said ad interim injunction petition and submitted therein that the petitioner being the plaintiff in the Id trial court of Civil Judge Jr. Divn. 3rd Court had filed a suit for declaration, permanent injunction along with a prayer for temporary injunction with ad-interim prayer being T.S. No. 306/2020 against the defendants/respondents wherein the case of the plaintiff/appellant was that she had purchased the schedule A property comprising of 10 satak from Sri Bishunupada Rakshit and Smt. Puspabala Dasi by virtue of deed of sale being No. 764 of 1983 and she subsequently sold 5 satak of the same to Puspabala and utilised the left over 5 satak by constructing a residential building in 3.7 satak and leaving the remainder 1.3 satak of land having dimensions of 64 ft breadth and 5 ft. length mentioned as schedule A1 property as passage for entrance in the said building. Subsequently the said Puspabala Dasi sold her 5 satak of land to the predecessors of the said defendants mentioned as schedule B property which defendants on 18.11.20 started to create disturbances in the usage of schedule A1 property which is part of schedule A by fixing an iron gate due to which the plaintiff had lodged a complaint against the defendants at the local P.S. and filed the instant suit as the defendants had tried to block the passage. It is the further case of the appellant that the defendant was trying to make construction upon the schedule A1 property on the southern side with intention to block the passage of the appellant knowing fully well that the said property was the

Contd...next page...

Misc. Appeal – 61/24

Contd.....Order No. 04 dated 03.10.24

only passage of the plaintiff after which the defendants appeared in the said suit before the ld trial court and filed written statement and also filed written objection against the injunction prayer filed by the plaintiff in the said ld trial court and that after hearing both the sides over the injunction petition, the ld trial court had passed the impugned order rejecting the prayer of the plaintiff. Ld Advocate for the appellant/plaintiff prayed for passing of order of temporary injunction ad-interim against the respondents as regards the A1 schedule property as the matter was urgent and that if the injunction was not given, the appellant would suffer irreparable loss and injury as his passage to his own property would get blocked. Ld Advocate for the appellant/petitioner also drew the attention of this court to the original sale deed, copy of letters of complaint given to the local P.S. and Panchayat and the plot information which had been filed by the petitioner with firisti.

Heard.

Perused the filed documents and the materials in the instant record. Considered.

It appears that the suit plot is an undivided property with both the petitioner and the respondents having their respective shares in the same. The petitioner at the time of hearing of this application has failed to produce the deed of sale by which he had sold off 5 satak of the suit property to the predecessor-in-interest of the respondents to prove that the common passage was not sold thereby to the O.P.'s and remained in his share. There is no scrap of paper produced at this stage by which it can be held that the disputed common passage is within the possession of the petitioner and was not sold off to the O.P.'s. The plaint filed by the petitioner in the ld trial court has also not been produced so that the sketch map of the respective scheduled property can be scrutinized. Hence, as such the petitioner herein has failed to show his prima facie case for grant of ad-interim injunction and as such his prayer for ad-interim injunction is considered and dismissed and thus disposed of.

The respondents are to show cause within 15 days from the date of service as to why the prayer for temporary injunction be not granted to the petitioner herein.

Issue filed requisites at once.

Call for LCR.

To 11.11.2024 for S.R. and receipt of LCR.

Dict. & corr. By me.

Sd/-
Addl. District Judge, 2nd Court,
Serampore, Hooghly.

Sd/-
Addl. District Judge, 2nd Court,
Serampore, Hooghly.