

Misc. Appeal – 57/22
CIS – 57/22

Order No.4 dated 30.09.2022:

Record is put up on prayer of the appellant.

Appellant also files an application under Order 39 Rule 1 and 2 read with Section 151 CPC. And also files xerox copies of some documents as per firisti. Let the document be kept with the record.

Ld. Advocate appearing for the appellant not pressed the earlier application filed under Order 39 Rule 1 and 2 read with Section 151 CPC filed on 02.09.2022 with permission of the Court.

Ld. Advocate of appellant moves the application under Order 39 Rule 1 and 2 read with Section 151 CPC praying for temporary injunction restraining the respondent No.1 and 2 from alienating any part of the suit property and also disturbing the peaceful possession of the appellant.

Issue notice upon the respondent Nos.1 and 2 directing them to show cause within 10 days of receipt of the notice as to why appellant's prayer for temporary injunction shall not be allowed.

Ld. Advocate moves for ad-interim order of injunction.

Ld. Advocate submits that suit plot is undivided dwelling house of the appellant and proforma respondents. The principal respondents (Respondent Nos.1 and 2) purchased undivided portion of the suit plot from some of the co sharers and if the respondents enter into joint possession of suit plot the privacy of the appellant and proforma respondent would jeopardied and the appellant would suffer irreparable loss and injury which cannot be compensated by money.

Perused the injunction application and the documents. Considered.

The suit property originally belonged to Priyanath Dutta who died leaving behind four sons namely, Satkari Dutta, Haradhan Dutta, Harekrishna Dutta and Madhusudhan Dutta as legal heirs. Wife of Priyanath Dutta predeceased him. Satkari Dutta died leaving behind proforma respondent Nos. 3 to 10. Haradhan Dutta died leaving behind the appellant and proforma respondent Nos. 11 to 22. Harekrishna Dutta died leaving behind proforma respondent Nos. 23 to 27. Madhusudhan Dutta died leaving behind proforma respondent Nos. 28 to 30. the appellant and proforma respondents were jointly possessing 'A' schedule property. Suit property i.e, LR Plot No. 1128 is viti in nature having buildings, cartilage, garden, courtyard and land of LR Plot No.1128 is undivided. The proforma respondent No.22, Bela Rani Dutta (since deceased) and Munmun Dutta (since deceased) being legal heirs of Haradhan Dutta, transferred their share in LR Plot No.1128 to respondent No.2 by a registered deed of sale registered in the Office of ADSR, Janai being No.04651 for the year 2010. But they failed to deliver the possession to the respondent No.2 because the appellant and proforma respondents have been possessing the land of LR Plot No.1128 as their undivided joint property. The respondent No.2 transferred the purchased property i.e. undivided share of LR Plot No.1128 to respondent No.1 by a registered deed of gift being No.05861 for the year 2010 registered in the Office of ADSR, Janai. But the

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respondent No.1 failed to get physical possession of the property as the respondent No. 1 and 2 are stranger purchaser to the Dutta family and they have no right to ask for joint possession and common enjoyment of dwelling house courtyard etc. In the month of April, 2022 the appellant noticed regarding illegal activities of respondent No.1 and 2 for forcibly taking possession of the property and after making search the appellant came to know about execution of two deeds.

I find from LR ROR that suit plot is a vitti land which belongs to the appellant and his family members. Suit property is being used as dwelling house and appurtenant thereto. Land of the suit plot has not yet been partitioned amongst its co sharers by metes and bounds. The respondent No.1 and 2 are strangers to the family of the appellant. If the respondent Nos. 1 and 2 enter into joint possession of the suit property, the family privacy of the appellant and his family members would be jeopardized. The appellant has a good prima facie case to go for trial. Balance of convenience and inconvenience tilt in favour of the appellant. In my opinion, there is urgency for grant of ad interim order of injunction. Hence, the prayer for ad interim order of injunction is allowed.

Hence,

ORDERED

That appellant, respondent Nos. 1 and 2 and proforma respondents are directed to maintain status quo in respect of nature, character and possession of suit property as described in schedule A to the injunction application till 29.11.2022.

Appellant is directed to comply with the provision of Order 39 Rule 3(a) (b) of CPC at once.

Fix 29.11.2022 for S.R of notice and appearance.

Dict. & corr. By me.
Sd/- Sri. Shailendra Kumar Singh
Addl. District Judge, 2nd Court,
Serampore, Hooghly.

Sd/- Sri. Shailendra Kumar Singh
UID No. - WB665
Addl. District Judge, 2nd Court,
Serampore, Hooghly.