

Misc. Appeal 05 of 2023

Order No. 03
02.03.2023

Ld. Advocate for the appellants files documents by firisti. Let the same be kept with the record.

He moves his application for stay.

Heard the Ld. Advocate. Perused the memo of appeal, application for stay, affidavit and documents filed by way of firisti.

Considered.

Issue notice upon the respondents to show-cause within 15 days on receipt thereof as to why the prayer for temporary injunction has made in the injunction application should not be granted.

Ld. Advocate for the appellants submits that the appellant is the owner of suit property, the nature of which is korfa. He further submits that the respondents predecessors previously purchased a portion of the said property from his grand mother and thereafter, he purchased the property from his father. The property of the nature korfa is not a transferable property. The execution of two deeds in favour of the respondents predecessors shows that the property was not transferable and the appellant is still owner and occupier of the same. The respondents has got the property mutated by unlawful means. The plaintiffs instituted a suit against the respondents and filed an application u/or 39 Rule 1 & 2 read with Section 151 CPC which was disposed of by the Ld. Court below by rejecting the application for temporary injunction on contest without cost. The impugned order is not justified and the facts and circumstances of the case and as such, an order of injunction should be made.

On careful perusal of impugned order, it transpires that the Ld. Court below has taken into consideration after proper considering rejected the application of injunction filed on behalf of the appellant.

It appears from the CSROR that Amina Khatoon Bibi was recorded Korfa in respect of the suit property.

From the documents submitted on behalf of the appellants, it transpires that the appellant took step of correction of L.R. & R.O.R. in the year 2022. It has been alleged by him that he came to know about the wrong entry in records of rights in the year 1995.

From the impugned order it transpires that the respondents have produced title deeds and L.R. & R.O.R. that they have title and possession in respect of the suit property.

I am of the view that the appellant has not been able to make out a prima-facie case at this stage. The balance of convenience and inconvenience is also not in favour of the granting of injunction against the respondents.

Ld. Advocate for the appellant has not filed any application for injunction, rather he has filed an application for stay.

On careful perusal of the impugned order, it transpires that the application for injunction was rejected on contest. So, there is no reason or occasion for making an order of stay.

Hence, prayer for stay of impugned order is hereby rejected.

Requisite at once. Call for LCR.

To 17.07.2023 for S.R. and appearance.

D/c. by me

Addl. District Judge,
FTC, Serampore(i.c.).

ADJ, FTC.

