

Misc. Appeal No. 94/2024
CNR No. WBHW0100 2398 2024
Present: Sonia Majumdar
District Judge, Howrah.
J.O. Code – WB01128

Later (Order No. 02) dated 22.05.2024.

The record is put up today on the basis of a put up petition.

On the prayer of the learned Advocate for the appellant, the application under Order 39 Rules 1 and 2 read with sec. 151 of the C.P.C. is moved

From the office report it appears that there is no caveat till date.

The application under Order 39 Rules 1 and 2 read with sec. 151 of the C.P.C. with a prayer for an order of temporary injunction against the respondent nos. 1 to 5 and their men, agents, associates and servants restraining them from making any construction over the southern side open space and also from causing any disturbances to the lawful rights of the common user as mentioned in the schedule B property and other reliefs, is taken up for hearing.

The case of the appellant/plaintiff is that the appellant/ plaintiff is the owner of 'A' schedule property on the ground floor and the respondents/defendant nos. 1 to 5 blocked the side open space by completing the incomplete structure for their own use causing disturbance. As such, the plaintiff/appellant has filed the suit being Title Suit No. 540 of 2024 and has prayed for an order of temporary injunction which was refused by the learned Trial Court. Being aggrieved, the appellant then filed the instant Misc. Appeal whereby he has prayed for an order of ad interim injunction.

Heard learned Advocate for the appellant. I have perused the injunction application and photocopies of the documents and other materials on record.

Considered.

On consideration of the same, I find that the appellant has filed photocopies of the documents showing the originals like deed of sale being no. 2736 dated 05.03.24, deed of sale being no. 2738 dated 05.03.24, certified copy of sale deed being no. 2737 dated 5.3.24, G.D.E. no. 108/23, photographs etc. in support of his case from which it comes out that description of the schedule mentioned property is not identical

with the property owned by the appellant. He cannot show any documents to establish that he has right, title and interest in respect of the schedule mentioned property.

That being the position and also considering the other facts and circumstances of the case and materials on record, I am of the opinion that an opportunity of being heard must be accorded to the defendant/respondent before passing an ad interim order of injunction. Hence, the prayer for ad interim injunction is refused at this stage.

Issue notice upon the respondents asking them to show cause within fifteen days from the date of receipt thereof as to why appellant'/plaintiff prayer for ad interim injunction shall not be granted.

Appellant is directed to file requisites at once for issuance of notice upon the respondents.

To date.

Dictated & corrected by me.

D. J.

District Judge, Howrah.