

TS - 4 / 2022 (CIS - 4 / 2022)

Contd....order No. 1 dated 06.01.2022

Ld. Advocate of the plaintiff moves the application filed under Order 39 Rules 1 & 2 of the C.P.C. read with Section 151 of the C.P.C. for an order of ad interim injunction against the defendant No. 1 along with an application for local inspection of the suit property under Order 39 Rule 7 C.P.C.

For the sake of convenience the application under Order 39 Rule 7 C.P.C. is taken up for hearing first.

Heard the ld. Advocate of the plaintiff at length.

Perused the instant petition.

Considered.

For the proper adjudication of the present suit, the instant petition filed by the plaintiff is allowed. Let Smt. Anandamoyee Nag be appointed as Ld. Advocate commissioner in the present suit. The Ld. Advocate Commissioner is directed to carry out the local inspection of the suit properties in terms of the points enumerated in the plaintiff's application u/O 39 R 7 C.P.C. Ld. Advocate Commissioner is further directed to serve notice upon the parties prior to holding the inspection work and it is also directed that the Ld. Advocate Commissioner shall submit the commission report within fifteen days from the date of completion of the commission work. The remuneration of the Ld. Advocate Commissioner is fixed at Rs. 1500/- which is to be borne by the plaintiff. The plaintiff is directed to deposit the sum of Rs.1500/- forth with, so that, the writ of commission could be issued to the Ld. Advocate Commissioner at the earliest. The plaintiff is further directed to supply copies of the relevant documents to the Ld. Advocate Commissioner in connection with the commission work.

The instant petition is accordingly disposed of.

Now the prayer of the plaintiff for passing an ad interim order of injunction in respect of the suit property against defendant No. 1 is taken up for consideration.

As per the note given by the Sherestader there is no caveat pending in connection with the subject matter of the present suit.

This is the suit for declaration, partition as well as permanent injunction.

Heard the Ld. Advocate of the plaintiff who submitted that the plaintiff is a co-sharer in respect of the suit property, as described in the 'Ka' schedule of the plaint, along with the defendants. Ld. Advocate also submitted that the plaintiff has acquired undivided share in the schedule property by way of purchase on the strength of sale deed Nos. 4184 of 1990 and 318 of 1991. Ld. Advocate further submitted that the defendant Nos. 1 to 13 are the other co-sharers in the suit property along with the plaintiff. Ld. Advocate contended that of late defendant No. 1 has been creating obstruction in the peaceful enjoyment of the share of the plaintiff in the suit property. In this connection Ld. Advocate submitted that the plaintiff sold a portion of his share in the 'Ka' schedule property to defendant No.1 and in this manner defendant No. 1 became a co-sharer in the suit property. Ld. Advocate emphasized that the plaintiff only sold a portion of his share to defendant No. 1 and the remaining portion of the same is still in possession of the plaintiff. Ld. Advocate went on to contend that on and from 01.01.2022 or thereabout the defendant No. 1 has been creating obstruction in the peaceful enjoyment of the

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share of the plaintiff in the suit property. In fact, on and from 01.01.2022 the defendant No. 1 has constantly attempted to change the nature and character of the suit property described in the 'Ka' schedule of the plaint even though the suit property is yet to be partitioned by metes and bounds between the parties. When the plaintiff prevented defendant No.1 from doing so, the said defendant threatened the plaintiff with dire consequences. In fact, the defendant No. 1 has continued to make repeated attempts to change the nature and character of the suit property on several occasions with the intention of raising illegal construction on the same. In addition to this he has also threatened the plaintiff that he will forcibly dispossess the plaintiff from the suit property. Ld. Advocate of the plaintiff thus submitted that the plaintiff was for the aforesaid reasons compelled to file the present suit against the said defendant in order to protect his right, title, interest in the suit property which is a joint property. He, therefore, prayed for an order of ad interim injunction against the defendant No. 1 restraining him from forcibly dispossessing the plaintiff from the suit property as well as from changing the nature and character of the suit property in any manner by making any kind of construction over any portion of the same.

Heard the Ld. Advocate of the plaintiff at length.

Perused the instant application as well as the documents furnished by the plaintiff like the original conveyance deed Nos. 4184 of 1990 and 318 of 1991 standing in the name of the plaintiff as well as the LR plot information slip pertaining to the suit property. From the aforesaid documents it is revealed that the plaintiff has an interest in the suit property along with the defendants. However, it is the case of the plaintiff that he sold a portion of his share to defendant No. 1 vide two different registered sale deeds being deed Nos. 1670 of 1999 and 96 of 2001. It is pertinent to mention here that the certified copies of the aforesaid sale deeds of defendant No. 1 have not been produced by the plaintiff for which reason it is not possible to ascertain whether the entire share or a portion thereof was sold by the plaintiff to defendant No. 1. Moreover, the LR plot information slip produced by the plaintiff is dated 11.06.2017 for which reason it cannot be relied upon for ascertaining the identity and the extent of the present share of the co-sharers in the suit plot. For this reason this Court is not inclined to allow the prayer for ad interim injunction at this stage without giving an opportunity of hearing to defendant No.1.

Hence it is,

ORDERED

That the application for ad interim injunction filed by the plaintiff is refused for reasons already discussed herein.

Issue notice upon the defendant No. 1 calling upon him to show cause within ten days from the date of receipt of the said notice as to why the application for temporary injunction filed by the plaintiff shall not be allowed and an order of temporary injunction shall not be passed against him.

Plaintiff is further directed to file requisites immediately.

To 07.02.2022 for filing show cause by the defendant No. 1 and to 13.04.2022 for S/R, appearance of all the defendants as well as C Report.

D/C by me

C. J. (Jr. Divn.)
Amta, Howrah
(JO Code WB 01195)

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