

TS – 74 / 2021 (CIS – 74 / 2021)
CNR – WBHW07-000 -2021)

Continued order No. 1 dated 30.06.2021

Ld. Advocate of the plaintiffs 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 defendants.

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 plaintiffs who submitted that the plaintiffs are co-sharers in respect of the suit property, as described in the 'Ka' schedule of the plaint, along with defendant Nos. 3 & 4. The plaintiffs have further claimed that the suit property is actually a joint property which is yet to be partitioned by metes and bounds between the co-sharers. It is the case of the plaintiffs that on and from 20.06.2021 the defendant Nos. 1 & 2 have been creating obstruction in the peaceful enjoyment of the plaintiff's share in the suit property. In fact, on and from 20.06.2021 the defendants have constantly attempted to change the nature and character of the 'Ka' schedule property described in the schedule of the plaint even though the suit property is yet to be partitioned by metes and bounds. When the plaintiffs prevented them from doing so, the said defendant Nos. 1 & 2 threatened the plaintiffs with dire consequences. In fact, the defendants have continued to make repeated attempts to change the nature and character of the suit property on several occasions. In addition to this they have also threatened the plaintiffs that they will forcibly dispossess the plaintiffs from the suit property. Ld. Advocate of the plaintiffs thus submitted that the plaintiffs were for the aforesaid reasons compelled to file the present suit against the defendants in order to protect their 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 Nos. 1 & 2 restraining them from forcibly dispossessing the plaintiffs from the suit property as well as from changing the nature and character of the schedule property in any manner.

Heard the Ld. Advocate of the plaintiffs at length.

Perused the instant application as well as the documents furnished by the plaintiffs like the LRROR relating to the suit property, as well as the original settlement deed being deed Nos. 615 of 1993 in addition to the certified copies of deed Nos. 3007 of 2020, 3008 of 2020 which stand in the name of defendant Nos. 1 & 2 and which the plaintiffs claim are void and illegal. From the aforesaid documents including the original settlement deed it is apparent that the plaintiffs have a definite interest in the suit property along with the defendant Nos. 3 & 4. There is nothing on record from which it could be concluded that the suit property has been partitioned by metes and bounds between the parties. Therefore, it is imperative that the interest of the

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parties in the suit property should be preserved and protected till the disposal of the temporary injunction application. This Court is of the considered view that the plaintiffs have made out a prima facie case which is fit to be tried by this Court. So, weighing the balance of convenience and inconvenience as well as upon taking into account the urgency involved in the matter, it is the considered view of this Court that an order of ad interim injunction should be granted in favour of the plaintiffs otherwise, the very object of filing the instant suit would stand defeated.

Hence it is,

ORDERED

That the application for ad interim injunction filed by the plaintiffs is allowed. Both parties are directed to maintain status quo with regard to the nature, character and their respective possession in the suit property. In addition to this, the defendant Nos. 1 & 2 are hereby restrained from forcibly dispossessing the plaintiffs from the schedule property without the due process of law. Besides this the defendant Nos. 1 & 2 are also restrained from disturbing the peaceful possession of the plaintiffs in the same. They are also restrained from changing the nature and character of the 'Ka' schedule property in any manner by making any construction over any portion of the same till the disposal of the temporary injunction application.

Issue notice upon the defendants calling upon them 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 plaintiffs shall not be granted against them.

Plaintiffs are directed to comply the provisions of Order 39 Rules 3 (a) & (b) of the C.P.C. at once.

Plaintiffs are further directed to file requisites immediately.

To 30.07.2021 for filing show cause by the defendant Nos. 1 & 2 and to 03.10.2021 for S/R, appearance of all the defendants.

D/C by me

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

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