

Title Suit 52 / 2020 (CIS - 52 / 2020)
(CNR No. - WBHW07 000 of)

Order No. 13 dated 14-03-2023

Today is fixed for filing W.S. and W.O. by the defendants as well as hearing of the temporary injunction application.

Both parties are present.

A petition is filed by the defendants praying for further time for filing W.O. and W.S. in this suit.

The instant petition is taken up for consideration.

Heard the Id. Advocates of the parties.

Perused the instant petition.

Considered.

From the suit record it is forthcoming that the statutory period for filing W.S. has already lapsed. Therefore, this Court is not inclined to grant any further time to the defendant for filing W.O. and W.S. Accordingly the prayer for further time is refused. The present suit shall be henceforth heard ex parte against the defendants.

Now the application for temporary injunction is taken up for hearing.

Heard the Ld. Advocate of the plaintiffs who submitted that 16 decimals of Bastu land comprised in Sabek dag No. 644 pertaining to sabek khatian No. 286 corresponding to LR khatian Nos. 192, 211, 315, 477, 600 & 1179 situated in the mouza of Fatehpur under Amta P.S. is the subject matter of the present suit. The plaintiffs have contended that the suit property originally belonged to Balai Chandra Patra. The said Balai Chandra Patra sold about 8 decimals of the suit plot to the predecessors of defendant Nos. 2 to 8 through different registered instruments. Later on, he sold 5 decimals out of the remaining 8 decimals of land in the suit plot to Bhakta Mallick, who was the predecessor of the plaintiffs and defendant Nos. 9 to 12, vide registered sale deed No. 6350 of 1981. During his lifetime the said Balai Chandra Patra continued to possess the remaining undivided 3 decimals of land in the suit plot. Upon his death this 3 decimals of land was inherited by his widow Satyabala Patra and his son Asit Patra. The plaintiffs have contended that even though their predecessor Bhakta Mallick purchased 5 decimals of land in the suit plot from Balai Chandra Patra in the year 1981 yet the ROR relating to the suit plot remained in the name of Balai Chandra Patra as the predecessor of the plaintiffs failed to take necessary steps due to lack of legal awareness for getting his name recorded in the ROR concerning the suit plot. Be that as it may the aforesaid heirs of Balai Chandra Patra illegally sold 8 decimals of land in the suit plot to defendant No.1 Sanjoy Mallick even though they had inherited only three decimals of land from their aforesaid predecessor. The said Sanjoy Mallick thereafter got his name mutated in the LRROR concerning the said 8 decimals of land in the suit plot illegally on the basis of his registered sale deed No. 50904994 of 2018. It is the contention of the plaintiffs is that on the basis of the impugned sale deed the defendant No. 1 is attempting to forcibly dispossess the plaintiff from the suit property with the objective of taking unlawful possession of the same. Though the plaintiff informed the local P.S. and the local Panchayat about the same yet the defendant continued to threaten the plaintiffs

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with unlawful dispossession. 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 temporary injunction against defendant No.1 restraining him from forcibly dispossessing the plaintiffs from the suit property as well as from changing the nature and character of the suit 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 plaintiff like the original sale deed No. 6350 of 1981 standing in the name of Bhaktaram Mallick i.e. the predecessor of the plaintiffs. From the aforesaid documents it is apparent that the plaintiffs have a definite interest in the suit property along with the defendants. 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 parties in the suit property should be preserved and protected till the disposal of the present suit. 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 urgency of the matter it is the considered view of this Court that an order of temporary 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 temporary injunction filed by the plaintiffs under Order 39 Rules 1 & 2 C.P.C. is hereby 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 No. 1 is hereby restrained from forcibly dispossessing the plaintiffs from the suit property without the due process of law. He is also restrained from changing the nature and character of the suit property in any manner till the final adjudication of this suit.

The application for temporary injunction stands disposed of accordingly.

To 20.06.2023 for ex parte hearing of the suit.

D/C by me

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

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