

Contd...order No.1 dated 04.04.2023

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 defendant Nos. 1 to 5.

As per the note given by the Sherestader no caveat has been lodged in connection with the defendant or the subject matter of the present suit.

Accordingly, there is no impediment in taking up the application for ad interim injunction filed by the plaintiff in the instant suit.

This is the suit for recovery of khas possession as well as permanent and mandatory injunction.

Ld. Advocate of the plaintiffs moves the application for ad interim injunction and submitted that the suit property described in the 'Ka' and 'Kha' schedule of the plaint is the subject matter of the present suit. Ld. Advocate submitted that the said suit property was also the subject matter of a previous title suit being T.S. 6 of 2011 which was filed by plaintiff No.5 along with her husband late Dulal Chandra Santra against defendant Nos. 1 to 3 of this suit as well as the predecessor of defendant Nos. 4 & 5. Ld. Advocate contended that the said suit was decreed in favour of plaintiff No. 5 and her husband vide judgement dated 28.02.2013. It was further declared in the said suit that the defendant Nos. 1 to 3 and predecessor of defendant Nos. 4 & 5 did not have any right, title or interest in the suit property. Despite this, the said defendants forcibly and unlawfully dispossess the plaintiffs from the suit property on 16.03.2023 in gross violation of the decree of permanent injunction passed in T.S. 6 of 2011. Besides this, the said defendants have also been changing the nature and character of the 'Kha' schedule property by removing soil from there as well as by making illegal construction on the same. When the plaintiffs tried to prevent the defendants from doing so then they were threatened with dire consequences. Ld. Advocate of the plaintiffs contended that for the said reason the plaintiffs have been compelled to file the present suit in order to protect their interest in the suit property from the said defendants who have got no right, title or interest in the same whatsoever.

Heard the Ld. Advocate of the plaintiffs at length.

Perused the instant injunction application as well as the documents furnished by the plaintiffs like the ROR No. 357 for the mouza of Purba Khalna, the original sale deed Nos. 1030 of 2011 and 5649 of 2021 as well as the certified copy of the judgement and decree passed in T.S. 6 of 2011. From the aforesaid documents it is apparent that the plaintiffs have got a definite interest in the suit property. Thus, the plaintiffs have succeeded in making out a prima facie case which is fit to be tried by this Court so far as the schedule suit property is concerned. Therefore, it is imperative that the interest of the plaintiffs in the suit property should be preserved and protected till the disposal of the temporary injunction application. Thus, upon weighing the balance of convenience and inconvenience as well as after 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 so far as the suit property is concerned, otherwise, the very object of filing the instant suit would stand defeated.

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Hence it is,

**ORDERED**

That the application for ad interim injunction filed by the plaintiffs is allowed in respect of the suit property as described in the schedule of the plaint. Defendant Nos. 1 to 5 are hereby restrained from changing the nature and character of the 'Kha' schedule property by making construction of any kind on any portion of the same till the disposal of the temporary injunction application.

Issue notice upon the defendant Nos. 1 to 5 calling upon them to show cause within fifteen 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 allowed and an order of temporary injunction shall not be passed 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 15.05.2023 for filing show cause by the defendant Nos. 1 to 5 and to 07.07.2023 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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