

TS – 60/ 2023 (CIS – 60/ 2023)
CNR – WBHW07-000 089 -2023)

Contd....order No. 1 dated 12.05.2023

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.

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 has specific share in the suit property as described in the schedule 'Ka' of the plaint. The plaintiff has contended that she has acquired interest in the suit property by way of registered sale deed No. 2113 of 1998. Ld. Advocate submitted that the suit property is a joint property which is yet to be partitioned by metes and bounds between the plaintiff and defendant Nos. 2 to 4. Ld. Advocate submitted that till recently the plaintiff was in peaceful possession of her share in the suit property. However, on and from 09.05.2023 the defendant No.1 has been disturbing the peaceful possession of the plaintiff in the suit property by giving out threats that he will forcibly dispossess the plaintiff from the suit property and shall change the nature and character of the same by making construction forcibly. Besides this he also threatened to transfer the suit property to a third party even though defendant No. 1 has got no right, title or interest in the same. Ld. Advocate of the plaintiff thus submitted that the plaintiff has been for the aforesaid reasons compelled to file the present suit against the said defendant in order to protect her right, title, interest in the schedule suit 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 till the disposal of the temporary injunction application. He also prayed for an order of ad interim injunction restraining defendant No.1 from transferring the suit property to any third party in the meanwhile.

Heard the Ld. Advocate of the plaintiff at length.

Perused the plaint, the injunction application as well as the documents furnished by the plaintiff like copy of the LR plot information slip relating to the suit property. Also perused copy of sale deeds Nos. 8558 of 1961, 415 of 1965, 598 of 1996 and 2113 of 1998. From the aforesaid documents it is apparent that the plaintiff has a definite interest in the suit property. Furthermore, there is nothing on record from which it could be concluded that the suit property has already been partitioned by metes and bounds between the co-sharers. Therefore, it is imperative that the interest of the plaintiff 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 plaintiff has made out a prima facie case which is fit to be tried by this Court. The balance of convenience and inconvenience is also found to lean in favour of passing an order of ad interim injunction. Therefore, 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 plaintiff 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 plaintiff is allowed. Both parties are directed to maintain status quo with regard to the nature, character and their respective possession in the schedule suit property till the disposal of the temporary injunction application. In addition to this, defendant No.1 is hereby restrained from forcibly dispossessing the plaintiff from the suit property as well as changing the nature and character of the suit property in any manner by making any construction over any portion of the same. In addition to this, defendant No.1 is also restrained from transferring the suit property to a third party till the disposal of the temporary injunction application.

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

Plaintiff is further directed to file requisites immediately.

To 22.06.2023 for filing show cause by the defendant No. 1 and to 03.08.2023 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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