

Order No. 2 dated 23.12.2019

Record is put up on the prayer of the petitioners and injunction application u/O 39 Rule 1 & 2 C.P.C. is filed by the petitioners.

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

Ld. Advocate of the petitioners have moved the prayer for temporary injunction.

This an application u/S 8 read with Section 9 of the W.B.L.R. Act.

The case of the petitioner briefly is that the subject matter of the present case originally belonged to Nalini Majhi, Probhat Chandra Majhi, Hrikish Makhi, Shibakrishna Majhi and Kalikrishna Majhi. It is the case of the petitioners that the case property is a joint property which has been inherited by the petitioners and OP No. 3 to 6 from their aforesaid predecessors. The petitioners have claimed that the OP Nos. 3 to 6 are the descendants of Lt. Binoy Krishna Sarkar @ Majhi and Lt. Debabrata Sarkar who had a definite undivided share in the 'Ka' schedule property. Subsequently, the said OPs sold the share of Lt. Binoy Krishna Sarkar @ Majhi and Lt. Debabrata Sarkar to OP Nos. 1 & 2 who are stranger purchasers in respect of the 'Kha' schedule property which is a part and parcel of the 'Ka' schedule property. Though the 'Ka' schedule property is yet to be partitioned among the co-sharers by metes and bounds yet a portion of the same i.e. the 'Kha' schedule property was sold by the aforesaid OPs to OP Nos. 1 & 2 without giving any notice to the petitioners. In fact, the petitioners became aware of the aforesaid convenience on 12.11.2019 when OP Nos. 1 & 2 tried to take unlawful possession of 'Kha' schedule property. When the petitioners tried to prevent them from doing so then the said OPs threatened that they will forcibly take possession of the 'Kha' schedule property very soon and shall also change its nature and character by making construction on it. Hence, the petitioners were compelled to file the present application u/O 39 R 1 & 2 C.P.C. praying for an order of temporary injunction from this Court.

The petitioners have filed with firstly list of documents which are herein referred to as annexures. From the material on record and the annexures filed by the petitioners it appears that the petitioners are a co-sharers in the 'Ka' & 'Kha' schedule properties. It is pertinent to mention here that the petitioners have already deposited a portion of the consideration money as is apparent from the original challan submitted by them.

Considering the nature of the case, the balance of convenience and inconvenience as well as the urgency involve in the matter, this Court is of the

view that if the relief of temporary injunction is refused at this juncture then the very object of the present application would stand defeated by delay.

Hence it is,

ORDERED

That the prayer for ad interim temporary injunction is allowed. The OP Nos. 1 & 2 are hereby restrained from making any addition or alteration or changing the nature and character of the case property by making construction over the same.

Issue notice upon the OP Nos. 1 & 2 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 petitioners shall not be granted against them.

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

Petitioners are further directed to file requisites immediately.

To 17.01.2020 for filing show cause by the OP Nos. 1 & 2.

D/C by me

C. J. (Jr. Divn.)  
Amta, Howrah

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