

TS – 95/ 2023 (CIS – 95/ 2023)
CNR – WBHW07-000 130 -2023)

Order No. 2 dated 01.07.2023

Record is put up on the prayer of the plaintiffs.

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 4.

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 have exclusive right, title and interest in the suit property as described in the schedule 'A' & 'B' of the plaint. The plaintiffs have contended that they have acquired interest in the suit property by way of inheritance from their predecessors. Ld. Advocate submitted that till recently the plaintiffs were in peaceful possession of the suit property. However, recently the defendant Nos.1 to 4 have been disturbing the peaceful possession of the plaintiffs in the suit property. Ld. Advocate further submitted that when the plaintiffs tried to raise construction on the suit property which is in their possession, the said defendants gave strong resistance as a result of which the plaintiffs could not proceed further with their planned construction. Ld. Advocate further submitted that the plaintiffs have undertaken construction activity on the suit property only after obtaining necessary permission and sanction plan from the local Gram Panchayat. Despite this defendant Nos.1 to 4 have been forcibly preventing the plaintiffs from completing the construction work started by them on the suit property. Ld. Advocate of the plaintiffs thus submitted that the plaintiffs have been for the aforesaid reasons compelled to file the present suit against the said defendants in order to protect their right, title, interest in the schedule suit property. He, therefore, prayed for an order of ad interim injunction against the defendant Nos.1 to 4 restraining them from forcibly preventing the plaintiffs from completing the construction work started by them on the suit property besides also restraining them from disturbing the peaceful possession of the plaintiffs in the suit property.

Heard the Ld. Advocate of the plaintiffs at length.

Perused the plaint, the injunction application as well as the documents furnished by the plaintiffs like the RORs and the government revenue receipts as well as the sanction plan issued by the Pradhan of Singti G.P. From the aforesaid documents it is apparent that the plaintiffs have a definite interest in the suit property. 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. 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. 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 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,

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character and the possession of the schedule suit property, which has been described in the 'A' & 'B' schedule of the plaint. In addition to this, defendant Nos.1 to 4 are hereby restrained from disturbing the peaceful possession of the plaintiffs in the suit property till the disposal of the temporary injunction application. However, this Court is not inclined at this stage to allow the prayer of the plaintiffs for continuing with construction activity on the suit property, as in the considered view of this Court allowing the said prayer at this stage without giving an opportunity of hearing to defendant Nos.1 to 4 would prejudice the said defendants. Since allowing the prayer of the plaintiffs to continue with the construction activity of the suit property would amount to granting one of the principal reliefs sought in the present suit without giving any opportunity of hearing to the defendants.

Issue notice upon the defendant Nos. 1 to 4 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 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 10.08.2023 for filing show cause by the defendant Nos. 1 to 4 and to 17.10.2023 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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