

TS - 113 / 2021 (CIS - 113 / 2021)
CNR - WBHW07-000 -2021)

Continued order No. 1 dated 07.10.2021

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 & 2. Ld. Advocate of the plaintiffs also files a separate application u/O 1 R 8 C.P.C. seeking the permission of the Court to sue defendant No. 2 which is an unregistered society represented by its secretary and its assistant secretary.

The application of the plaintiffs u/O 1 R 8 C.P.C. is taken up for consideration first.

Heard the Ld. Advocate of the plaintiffs in connection with the said application.

Perused the instant application.

Considered.

From the instant petition it is apparent that the unregistered society being defendant No. 2 has a number of members, the particulars of each of whom is not known to the plaintiffs. The plaintiffs have filed the present suit against defendant No. 2 by impleading its secretary and its assistant secretary. In view of this fact, this Court is inclined to grant necessary permission to the plaintiffs to sue defendant No. 2 which is an unregistered society. In addition to this, this Court also directs the plaintiffs to take steps for publication of general notification and its wide circulation concerning the filing of the present suit so that all the members of the said unregistered society could be duly notified about the institution of the present suit.

Now the application filed by the plaintiff for grant of an ad interim order of injunction against defendant Nos. 1 & 2 is taken up for consideration.

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 are co-sharers in respect of the suit property, as described in the schedule I, II & III of the plaint, along with the defendants. Ld. Advocate also submitted that the plaintiffs have acquired undivided interest in the schedule property along with the said defendants from their respective predecessors in interest by way of purchase through registered deeds as well as by way of inheritance. Ld. Advocate further submitted that the suit property is yet to be partitioned by metes and bounds between the aforesaid co-sharers. It is the case of the plaintiffs that on and from 20.09.2021 the defendants have been creating obstruction in the peaceful enjoyment of the share of the plaintiffs in the suit property. In fact, on and from 20.09.2021 the defendants have constantly attempted to encroach the best portion of the schedule suit properties and change the nature and character of the same by attempting to encircle best portion of the same with the ill motive of making unlawful construction forcibly over the said best portion

TS - 113 / 2021

Continued order No. 1

of the suit property even though the suit property is yet to be partitioned by metes and bounds between the parties. When the plaintiffs prevented the said defendants from doing so, the defendant Nos. 1 & 2 threatened the plaintiffs with dire consequences. In fact, the said defendants have continued to make repeated attempts to change the nature and character of the suit property on several occasions with the intention of raising illegal construction on the same. In addition to this they have also threatened the plaintiffs that they will forcibly dispossess the plaintiffs from the suit property and thereafter transfer the same to a third party. 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 suit property which is a joint property. He, therefore, prayed for an order of ad interim injunction against the defendants restraining them 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 by encircling the same with any kind of boundary or by making any kind of construction over any portion of the suit property or transferring, encumbering or alienating the same in favour of any third party till the disposal of the temporary injunction application.

Heard the Ld. Advocate of the plaintiffs at length.

Perused the instant application as well as the documents furnished by the plaintiffs like the copies of RORs pertaining to suit property along with the copies of the deeds on the basis of which the plaintiffs are claiming interest in the suit property. From the aforesaid documents it is apparent that the plaintiffs have a definite interest in the suit property. 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 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. So, weighing the balance of convenience and inconvenience as well as upon 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, character and their respective possession in the suit property. In addition to this, the defendant Nos. 1 & 2 are hereby restrained from forcibly dispossessing the plaintiffs from the suit property without the due process of law. Besides this the defendant Nos. 1 & 2 are also restrained from disturbing the peaceful possession of the plaintiffs in the same. The defendant Nos. 1 & 2 are further restrained from changing the nature and character of the suit property in any manner by encircling it with any kind of boundary or by making any construction over any portion of the same. In addition to this the said defendants are also restrained from encumbering, alienating or transferring the suit property to any third party till the disposal of the temporary injunction application.

Issue notice upon the defendants 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 11.11.2021 for filing show cause by the defendant Nos. 1 & 2 and to 14.01.2022 for S/R, appearance of all the defendants as well as steps by the plaintiffs for the circulation of notification on all the members of defendant No.2 concerning the filing of the present suit.

D/C by me

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

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