

Title Suit – 113 / 2021 (C.I.S. 113 / 2021)
(C.N.R. WBHW07- 000 -)

Order No. 11 dated 31.03.2023

Today is fixed for hearing of the temporary injunction application filed by the plaintiffs under Order 39 Rules 1 & 2 C.P.C.

Both parties are present.

The application for temporary injunction is accordingly taken up for hearing.

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 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 temporary 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 final adjudication of the present suit.

Heard the Ld. Advocate of the plaintiffs at length.

Perused the instant application as well as the documents furnished by the parties 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 both parties 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

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the present suit. 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 temporary 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 temporary injunction filed by the plaintiffs under Order 39 Rules 1 & 2 C.P.C. is hereby allowed on contest.

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. In addition to this the said defendants are also restrained from encumbering, alienating or transferring the suit property to any third party till the final adjudication of the present suit.

The application for temporary injunction stands disposed of accordingly.

To 05.07.2023 for framing of issues.

D/C by me

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

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