

Order no.21 dt. 04.02.2016

Today is fixed for hearing of injunction petition under Order 39 Rule 1 & 2 of CPC.

Plaintiff files two separate petition u/Sec. 80(2) and under Order 1 Rule 10(2) of CPC. Let these two petitions be kept with the record.

The record is taken up for hearing and passing necessary order.

Plaintiff's case in short is that she has purchased the suit property from original owner namely Gopal Chanra Majhi by dint of registered deed of sale being no.793 dated 03-05-13. The plaintiff has purchased the suit property after satisfying herself that the vendor of the said deed was the original owner and his name had been duly recorded in the LRROR. That after said purchase, the plaintiff is in possession of the suit property by way of cultivation. The defendants are strangers to the suit property and they have no right title & interest over the schedule suit property, but they firstly on 14-01-14 entered into the suit property and threatened the plaintiff as well as her husband to vacate the suit property and they also threatened to destroy the crops lying over there. Defendants again on 23-01-14 came to the suit property along with some other persons and tried to destroy the crops. Hence, the plaintiff has filed this suit and he now prays for an order of injunction against the defendants.

Defendant by filing written objection contested the injunction petition and denied all the materials facts of the plaint save and except the fact to the effect that plaintiff is the owner in respect of the suit property. Defendant raised vehement objection against the instant prayer of the petitioner. Ld. Adv for the defendant submitted that the defendant no. 2 is the recorded bargadar in respect of the suit property under the plaintiffs. As per the defendant he was a bargadar under the previous owner of the suit property name Gopal Chandra Majhi and after the said transfer he is Bargadar under the plaintiff of the suit. Defendant further stated that though they had tender the share of produce to the plaintiff but she always denied to givr any receipt thereof to the defendant no.2. Defendant further stated that the plaintiff is not in the khas possession of the suit property. Hence he prayed for rejection of injunction petition.

Ld. Adv for the plaintiff submitted that during the pendency of the suit the Concerned BL&LRO by violating the order of ad-interim injunction of the court recorded the name of the defendant as bargadar in respect of the suit property. During the pendency of misc case being no B.C. NO. 3 OF 2014, the plaintiff made a application before the said forum to have became the party of this misc case but the concerned forum reject their application and by violating the principle of justice without hearing of the plaintiffs recorded the name of the defendant as bargadar in respect of the suit property.in order to support his contention plaintiff have filed the copy of order sheet of misc case being no B.C. NO. 3 OF 2014,LR searching of dag nos.496 and 455, the deed being no. 463 dated 18-04-77, the deed being

no.793 dated 10-05-13, Govt. rent receipts, GDE slip, copy of objection against the application of misc case being no B.C. NO. 3 OF 2014 filed by the Gopal Chandra Majhi, copy of application for impleaded as party to the B.C. NO. 3 OF 2014, LRROR vide khatian no. 850.

On perusal of the document filed by the plaintiff, it transpires to me that the B.L.& L.R.O. UN Pur passed an order regarding the recording of bargadar in respect of the suit property on 21-02-14 and the present suit has been filed on 28-01-14 and the ad-interim order was passed on the same date. On such careful perusal, also appears that the concerned forum recoding the name of defendant as bargadar in respect of the suit property without hearing of the other side which violation of natural justice this court also finds that the concerned forum did not follow the provision 21(4) of WBLR Act 1955 in recording the name of defendant no. 2 as bargadar in respect of the suit property.

Now, it has been held through various judicial pronouncements that while considering petitions of this nature the court should take note of the following ingredients, namely prima facie case, balance of convenience and inconvenience and irreparable loss.

Now, on perusal of the documents and hearing the submissions of both the parties, I think that whether the defendants are the bargadar or not and whether the defendants or the plaintiffs has in the possession, of the suit property is a matter of evidence and no definite conclusion can be arrived at this interlocutory stage and on the basis of record of rights which is prepared by violating the law and natural justice. But in either of the capacity, the defendants has no right to change the nature and character and threat the plaintiffs and should not have the liberty to disturb the plaintiff in his peaceful possession of the suit property.

Hence, the balance of convenience is in the favour of the plaintiff. Again, I think that if the interest of the plaintiff is not protected at this stage, then the plaintiff will suffer from irreparable loss and injury.

Hence, it is,

ORDERED

That the injunction petition Order 39 Rule 1 & 2 of CPC is hereby considered and allowed.

Both the parties are directed to maintain status quo regarding nature, character and possession of the schedule suit property, as it stands today till the disposal of the suit.

Fix
CPC.

for hearing of petitions u/Sec. 80(2) and under Order 1 Rule 10(2) of