

TS – 120/ 2022 (CIS – 120/ 2022)
CNR – WBHW07-000 -2022)

Contd...order No. 1 dated 31.08.2022

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 defendant No.1.

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 undivided share in the schedule 'Ka' suit property. The plaintiffs have contended that the schedule suit property is a joint property which is yet to be partitioned by metes and bounds. Ld. Advocate submitted that till recently the plaintiffs were in peaceful joint possession of the suit property along with the defendants herein. However, on and from 12.06.2022 the defendant No. 1 has been disturbing the peaceful possession of the plaintiffs in the suit property by giving out threats that he will forcibly dispossess the plaintiffs from the suit property and shall change the nature and character of the same by making construction on the best portion of the same. 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 defendant in order to protect their right, title, interest in the schedule suit property which is a joint property. He, therefore, prayed for an order of ad interim injunction against the defendant No.1 restraining him from forcibly dispossessing the plaintiffs therefrom as well as from changing the nature and character of the same in any manner till the disposal of the temporary injunction application.

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 sale deed No. 655 of 2008 along with the LR plot information slip relating to the suit property. From the aforesaid documents it is apparent that the plaintiffs have a definite interest in the schedule suit property. There is nothing on record from which it could be concluded that the said 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. The balance of convenience and inconvenience is also found to lean in favour of passing an order of ad interim injunction after taking all the aforesaid facts into account. 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.

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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 schedule suit property, which has been described in detail in the schedule of the plaint, till the disposal of the temporary injunction application. In addition to this defendant No. 1 is hereby restrained from disturbing the peaceful possession of the plaintiffs in the suit property by attempting to forcibly dispossess them from the same. He is also restrained from changing the nature and character of the suit property by making any construction on the same till the disposal of the temporary injunction application.

Issue notice upon the defendant No. 1 calling upon him 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 him.

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 30.09.2022 for filing show cause by the defendant No. 1 and to 07.12.2022 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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