

TS – 126 / 2022 (CIS – 126/ 2022)
CNR – WBHW07-000 - 2022)

Contd...order No.1 dated 06.09.2022

Ld. Advocate of the plaintiff 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 defendants.

As per the note given by the Sherestader there is no caveat pending in connection with the subject matter of the present suit. Accordingly, there is no impediment in taking up the application for ad interim injunction filed by the plaintiff in the instant suit.

This is the suit for declaration as well as permanent injunction.

Ld. Advocate of the plaintiff moves the application for ad interim injunction and submitted that the plaintiff has got exclusive right, title and interest in the 'A' & 'C' schedule suit property as described in the schedule of the plaint. Ld. Advocate further submitted that the plaintiff has become owner of the 'A' schedule property by way of inheritance as well as vide gift deed Nos. 3446 of 2003 and 1020 of 2022. Ld. Advocate further submitted that the defendants are the owners of the adjoining 'B' schedule property of the plaint who have been trying to encroach upon the 'C' schedule suit property which is a common passage belong exclusively to the plaintiff.

Ld. Advocate further contend that till recently the plaintiff was peacefully enjoying the suit property when all of a sudden on 10.08.2022 the defendants trespassed the 'C' schedule suit property with the intention of raising a guard-wall on the same even though they have no right, title or interest therein. When the plaintiff objected to the behavior of the defendants, they openly threatened that if the plaintiff dared prevent them from constructing the guard-wall then he will have to face dire consequence for the same. Though the plaintiff brought this matter to the notice of local P.S. yet, no action was taken against the defendants. Ld. Advocate of the plaintiff contended that for the said reason the plaintiff has been compelled to file the present suit against the defendants in order to protect his right, title and interest in the suit property.

Heard the Ld. Advocate of the plaintiff at length.

Perused the instant application as well as the documents furnished by the plaintiff like the original gift deed Nos. 1020 of 2022 and 3446 of 2003 as well as LRROR relating to the suit property. From the aforesaid documents it is apparent that the plaintiff has not got interest to the extent of the entire suit property as is forthcoming from the aforesaid gift deeds and the LRROR relating to the suit property. Yet the present suit has been filed by him in respect of the entire 'A' schedule property by claiming that the 'C' schedule property is a part and parcel of the same. The other co-sharers in the 'A' schedule property have not been made parties in this suit though the entire area of the suit plot measuring 17 decimals has been made the subject matter of the suit along with the 'C' schedule property. Therefore, after taking all these facts into account, this Court is not inclined to allow the prayer for ad interim injunction without first giving an opportunity of hearing to the defendants.

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Hence it is,

ORDERED

That the application for ad interim injunction filed by the plaintiff is rejected on the ground discussed herein.

Issue notice upon the defendants calling upon them to show cause within fifteen days from the date of receipt of the said notice as to why the application for temporary injunction filed by the plaintiff shall not be allowed and an order of temporary injunction shall not be passed against them.

Plaintiff is further directed to file requisites immediately.

To 29.09.2022 for filing show cause by the defendants and to 12.12.2022 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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