

TS - 148/ 2022 (CIS - 148/ 2022)
(CNR - WBHW07-000197 -2022)

Order No. 02 dated 29.09.2022

Record is put up on the prayer of the plaintiffs.

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 defendants.

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 as well as permanent injunction.

Heard the Ld. Advocate of the plaintiffs who submitted that the plaintiffs have undivided share in the suit property as described in the "Ka", "Kha" & "Ga" schedule of the plaint. The plaintiffs have contended that the schedule suit property is a joint property which has been inherited by the plaintiffs from their father and mother. The plaintiffs have claimed that the suit property originally belonged to their father Adhibas Sandhukha who gifted the same to the mother of the plaintiffs namely Dibarani Sandhukha vide a registered gift deed dt. 12.02.1988. Unfortunately the said Dibarani Sandhukha died during the lifetime of her husband leaving behind her husband as well as the plaintiffs and defendant no. 01 as her legal heirs. It is pertinent to mention here that defendant no. 01 is the own brother of the plaintiffs. Accordingly the suit property devolved upon the plaintiffs, defendant no. 01 as well as their father Adhibas Sandhukha. It is significant to note that the said Adhibas Sandhukha died on 27.06.2020 leaving behind the plaintiffs and defendant no. 01 as his legal heirs.

Ld. Advocate of the plaintiffs submitted that till recently the plaintiffs were in peaceful joint possession of the suit property along with the defendant no. 1 herein. However, on and from August 2022 the defendants have been disturbing the peaceful possession of the plaintiffs in the suit property by giving out threats that they 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 suit property. In fact, the defendants claimed that they acquired exclusive interest in the suit property on the basis of register gift deeds executed by the said Adhibas Sandhukha during his lifetime. The shocked plaintiffs took out certified copies of the said gift deeds and were is stunned to learn that the defendants have fraudulently influenced the said Adhibas Sandhukha to execute the impugned gift deeds in their favour even though he did not have exclusive ownership of the suit property at the time of execution of the said gift deeds. Despite this, the defendants have been threatening to forcibly dispossess the plaintiffs on the basis of the impugned deeds. 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 schedule 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 therefrom as well as from changing the nature and character of the suit property by making construction on the same 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 certified copy of the gift deed dt. 12.02.1998

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executed in favour of the mother of the plaintiffs and the certified copy of the impugned gift deeds executed in favour of the defendants. From the aforesaid documents it is apparent that the plaintiffs have a definite interest in the suit property. However, 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 was imperative on the part of the plaintiffs to seek the relief of partition besides the other reliefs claimed in respect of the suit property. In fact, it has been held by the Hon'ble Calcutta High Court in AIR 2008 Calcutta 68 that no order of injunction can be passed against a co-sharer defendant if the relief of partition has not been solved by the plaintiff in the plaint. In the matter at hand the relief of partition has not been sought by the plaintiffs for which reason this Court is not inclined to allow the application for injunction at this stage.

Hence it is,

ORDERED

That the application for ad interim injunction filed by the plaintiffs is refused on the ground discussed herein.

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 further directed to file requisites immediately.

To 29.11.2022 for filing show cause by the defendants and to 16.01.2023 for S/R, appearance of both the defendants.

D/C by me

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

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