

Misc. Appeal No. 09 of 2021

CNR No. - WBJP01-000679-2021

J.O. Code - WB01133

Order No. 03, dt.22.02.2021.

The record is taken up for admission hearing.

As per the office report, court fees paid is found to be correct and there is no caveat pending.

This appeal is filed under Order 43, Rule 1(r) read with Section 104 of the Code of Civil Procedure against the impugned order dated 20.01.2021 passed by the learned Civil Judge, Junior Division - 1 at Jalpaiguri in T.S No. 36/21.

Let the appeal be admitted.

Appellant files hazira.

Learned counsel for the appellant is present and he moves the application for *ex-parte* ad-interim order of injunction on the ground stated in the injunction application and the copy of the plaint.

Heard the learned counsel appearing for the appellant.

Considered the grounds stated in the injunction application as well as the plaint.

Perused the impugned order passed by the learned trial court.

It appears that the plot of land comprised in C.S Plot No.549/1003 and 550/1005 under Khatian No. 114, J.L No.2 within Mouja - Dabgram, under P.S - Rajganj as mentioned in the schedule appended to the plaint belonging to the appellant/plaintiff, is a part of a vast land. The plaint and injunction application disclose that the defendants are also claiming to have purchased some parts of the said land from one Sovarani Saha. Whether said Sovarani Saha is actual owner of some parts of land, requires a factual determination. It appears that there is a *prima-facie* case in favour of the plaintiff/appellant. The plaintiff/appellant and the defendants/respondents both are claiming possession in respect of their portions of purchased land on the same land in which C.S Plot No.549/1003 and 550/1005 under Khatian No.114 appears to be situated.

At this stage, while hearing the application for grant of ad-interim order of injunction, I am not convinced with the arguments of the learned advocate appearing for the plaintiff/appellant that the purpose of injunction application itself will be frustrated unless *ex-parte* ad-interim order is granted. I do not find any factual background stated in the plaint or in injunction application regarding grave urgency warranting any restraining order against the respondents/defendants without giving any opportunity of hearing to the defendants/respondents.

Contd...//22.02.2021,

Accordingly the prayer for *ex-parte* order of injunction stands refused.

The plaintiff/appellant is directed to serve notice upon the defendants/respondents calling upon them to show-cause by the next date as to why the injunction, as prayed for by the appellant/plaintiff, shall not be granted.

To 16.03.2021 for filing show-cause and hearing of the injunction application along with Misc. Appeal.

Dictated & corrected by me,

District Judge, Jalpaiguri,

District Judge, Jalpaiguri