

T.S. 714 of 2022
CNR No.WBSP0E0009982022
J.O. No.WB01462

Order no.16 dated 25.03.2025

Today is fixed for injunction hearing.

Both parties file hazira. Plaintiff also files a petition for extension of ad interim injunction.

Vide this order I shall dispose off the petition under order 39 rule 1 and 2 of CPC dated 03.12.2021 moved on behalf of the plaintiff.

Shown of the unnecessary details, the plaintiff has instituted the present suit of declaration and injunction against the defendant in respect of land described in the schedule of the application. The plaintiff made the instant application of temporary injunction under Order 39 Rule 1 and 2 praying to restrain the defendant from creating disturbance in peaceful enjoyment of Ka schedule property to ingress and egress in Kha schedule property.

It is, inter alia, stated by the plaintiff that the Ka schedule suit property was previously the property of Md. Nachim Ali Khan who transferred the same to Md. Khadem Ali Khan, by dint of a deed being no. 13458 of 1975. The said Md. Khadem Ali Khan had been using the same for the ingress and egress of the kha schedule property. After the demise of Md. Khadem Ali Khan, his five sons, two daughters and widow came into the possession of the Kha schedule property and had been continuously using the Ka schedule property. Suddenly, the principal defendant trying to encroach the Ka schedule passage and continuously disturbing the peaceful possession of the plaintiff. As such, the cause of action arose and having no other alternative the plaintiff has come up before this court and has instituted this case and now praying for temporary injunction restraining the principal defendant from causing disturbance of ingress and egress over the Ka schedule suit property.

On the other hand, defendant by filing written statement denied the contentions of the plaintiff. Defendant states that suit property in plot no. 1068 measuring 2 decimal of land originally belonged to Nachem Ali Khan in LRROR 2021. After death of Nachem his legal heirs sold 1 decimal in the suit property and total 11 decimal along with suit and non suit property to the defendant vide deed being no. 4975 dated 13.12.2009 which the defendant recorded in LR khatian no. 2090. The defendant also instituted M.P. case no. 1213/2022 which was also disposed off. The defendant alleges that Khadem Ali never got any property from Nachem Ali and the gift deed by which Nachem Ali claims to have acquired title over the suit property is fraudulent and void. Thus the suit is liable to be dismissed.

Heard both sides. Perused the petition, W.O., pleadings and the relevant documents submitted by both sides.

Order 39 rule 1 and 2 C.P.C deals with a power to grant interim relief. The relief of an ad interim injunction is a discretionary relief. Temporary injunction can be granted to a party on its own risk and responsibility as in case he loses the case, he cannot take any assistance of the interim order granted by the court. Reliance is placed on **Rajasthan housing board v. Krishna Kumari, 2005 13 scc 151.**

While exercising the discretion the court normally applies the following test;

- i. *Whether the plaintiff has a prima facie case;*
 - a. *Whether the contention of the party in the suit appears to be plausible i.e. whether the suit on the part of applicant has some substance in it so as to continue further. At this stage, the merits of the case are not examined.*
 - b. *Whether the allegation on the basis of which the application has been made are prima facie plausible.*
- ii. *Whether the balance of convenience lies in favor of plaintiff; and*
- iii. *Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory is disallowed..."*

Keeping in view the legal principles culled out above with regard to grant of interim injunction, the court after perusing the pleadings finds that the plaintiff has instituted the suit for declaration of easement by grant over Ka schedule suit property to have ingress and egress over kha schedule suit property. The Kha schedule suit property is 1 decimal of land in suit plot no. 1068. The plaintiff is claiming grant of easement on the basis of deed being no.13458/1975, wherein Nachem Ali contentedly gifted the Ka schedule suit property to father of the plaintiff Khadem Ali. The defendant denies such execution of deed claiming it to be void and fraudulent and claims better title on the basis of deed executed by legal heirs of Nachem Ali vide deed being no. 4975 dated 13.12.2009. Certainly, both these contentions are rival in nature and needs to be adjudicated. What I can see from documents of the defendant that the defendant is in possession as per report of BL&LRO. In such circumstances, restraining order against the defendant cannot be passed. However, there is a need preserve the suit

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property as result of which I am inclined to direct both parties to maintain status quo with regard to nature, character and possession of the suit property till disposal of the suit.

Anything expressed herein shall not tantamount to the expression of opinion on the merits of the case.

Hence, it is,

Ordered

that the injunction application filed by the plaintiff is allowed on contest but without any cost.

The defendant is restrained from creating disturbance in peaceful possession of the plaintiff in respect of the schedule suit property till final disposal of the suit.

To 22.05.2025 for framing of issues.

Prayer for extension of ad interim order is rejected.

D & C by

sd/-

Civil Judge (Junior Division) 2nd Court
Baruipur, South 24 Parganas

sd/-

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Baruipur, South 24 Parganas