

Order No. 3, dtd. 30.07.2022

Appellants file Ld. Advocate's hazira.

Appellants also file some documents with firisti.

The matter is taken up for hearing on the point of admission.

Heard the Ld. Advocate for the appellant. Perused the memo of appeal including the certified copy of the impugned Order dated 23.03.2022 passed by Ld. Civil Judge (Jr. Divn.), 1st Court, Berhampore in Title Suit No. 78/2022 and other documents filed.

Considered. Admit.

Call for LCR.

Issue notice upon the respondents.

The petition under Order 39, Rule 1 and read with section 151 CPC filed by the appellants/ applicants being moved is taken up for hearing.

Heard Learned Advocate for the appellants. Perused the order impugned and other documents filed.

Assailing the order passed by Learned Court below, this Misc. Appeal has been filed the appellants along prayer for ad-interim injunction.

The contention of the appellants is that they are in possession of the suit property, while remaining so, the defendants on 27.10.2019 threatened them that they would dispossess the appellants from the suit property declaring that the said property has been transferred by other defendants and after knowing the same, the plaintiffs started searching about the said fake deed by which the suit property was allegedly transferred in favour of the defendants.

Learned Advocate appearing for the appellants submitted that Article 59 of the Limitation Act, 1963 permits 3 years' time for challenging the transaction placed on fraud. Learned Advocate appearing for the appellants also submitted that before expiry of the said limitation as provided in Article 59 of the Limitation Act, a suit can be brought to challenge the fake or fraudulent transfer and contended that the suit filed was within time as prescribed by law and there is no justification on the part of Ld. Court below to refuse injunction on the ground that while the plaintiffs waited for 2 years after knowing the existence or after getting information of a fake deed in respect of the suit property.

I have gone through the impugned order. I have considered the submission advanced by Ld. Advocate for the appellants.

Having considered the submission made and on perusal of Article 59 of the Limitation Act and also averments made in the Memo of Appeal and crux of the case pleaded by the plaintiffs/appellants before Ld. Court below, it appears to this Court that the appellant has a good prima facie case to go into trial as their title has been attempted to be clouded by the act of the defendants. Therefore, to preserve and protect the property in question an injunction is required to be granted in favour of the appellants.

Therefore, the prayer for ad-interim injunction is allowed.

Respondent Nos. 1 to 5 are restrained from changing the nature and character of the suit plots and cutting away trees of the suit property and from creating third party interest thereon by transferring or alienating and from disturbing the peaceful possession of the plaintiff/appellants in the "A" schedule suit land and from dispossessing the appellants therefrom till next date.

Appellants are directed to comply with the provision order 39, rule 3 CPC at once and issue notice upon respondent Nos. 1 to 5 to show cause within 15 days from the date of receipt of the notice as to why the aforesaid order shall not be made absolute.

Requisites at once.

Fix 01.09.2022 for SR/AD, LCR and further order.

D/C by me

District Judge, Murshidabad

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