

In the Court of the District Judge, Murshidabad

Present: Sri Bhaskar Bhattacharjee
District Judge, Murshidabad
(JO-WB00640)

Misc. Appeal 23/2024

Order No. 02, dtd. 18.09.2024

This day the case record is placed before this Court on the strength of Put-up petition, filed on behalf of the appellant.

Appellant files another petition praying for under Order 39 Rule 1 and 2., read with Section 151 of C.P.C..

Ld. Advocate for the appellant is present.

The case record 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 29.07.2024 passed by the Ld. Civil Judge (Jr. Divn.), 2nd Court, Berhampore, Murshidabad in c/w T.S No. 267/2024 and other documents filed. It appears that this appeal is filed within time and upon hearing the submission of the Ld. Advocate for the appellant, I am of the view that there are good grounds for admitting this appeal.

Hence, this appeal is admitted.

Call for LCR.

Issue notice upon the respondents.

Requisites to be filed within 2 days.

The application dated 18.09.2027 under Order 39 Rule 1 and 2., read with Section 151 of C.P.C. being moved, is taken up for hearing.

Some documents are also filed on behalf of the appellants. Let it be kept with the record.

No caveat has been filed, as per report of the office.

Heard the Ld. Advocate for the appellant.

Perused the Memo of appeal, the application under Order 39 Rule 1 and 2 read with Section 151 of the C.P.C., the affidavit and the documents submitted. .

The instant Misc. appeal has been filed against the order of refusal of Ad-interim Injunction by the Court of Ld. Civil Judge (Jr. Divn.), 2nd Court, Berhampore, Murshidabad in Title Suit No. 267/2024 vide order dated 29.07.2024.

The fact projected in the injunction petition is that the property mentioned in the scheduled of the plaint consists of RS & LR Plot No. 345 measuring 128 decimal of land out of which one Jharubala Bibi had 64 decimals and her name was duly recorded in LRROR. On her demise, her only son namely, Dwijapada Mondal being her legal heirs became the owner and the possessor of the suti property. Thereafter, said Dwijapada Mondal died leaving behind his one son i.e. Dilip Mondal and wife i.e. Rekha Rani Mondal. Dilip Mondal. Rekha Rani Mondal transferred their share i.e. 64 decimals to Shefali Chowdhury by registered Deed being No. 10466/91 dated 11.11.1991. Shefali Chowdhury further acquired 64 decimals from her maternal uncle by registered Gift Deed being No. 1539 dated 04.02.1991 and delivered possession. In this way said, Shefali Chowdhury became owner of 128 decimals in the suit property. Subsequently, said Shefali Chowdhury transferred her share to the Plaintiff/appellant who is minor by registered Sale Deed No. 4391 dated 31.08.2023. Defendant No. 1 Jahurabala Mondal erroneously got her name recorded in the LRROR. Defendant Nos. 2 & 3 had purchased property from Defendant No. 1. As Defendant No. 1 had no title in the suit property, Defendant Nos. 2 & 3 have not acquired any title therein. The defendant/respondent Nos. 1 to 3 are trying to dispossess the Plaintiff/appellant from the suit property and also trying to change nature and character of the suit property and also disturb the peaceful possession of the Plaintiff/appellant in the suit property. Hence, appellant/plaintiff had knocked the door of the Ld. Court below for getting an order of injunction with a prayer for injunction and produced certain documents. However, Ld. Court below observed that the ownership of Shefali Chowdhury in respect of 128 decimals on plot no 345 has not been established and where the ownership of Sefali Chowdhury

Contd....

Order No. 02, dtd. 18.09.2024(Contd....)

is defective, the ownership of the Plaintiff/appellant also in question and thus, the Plaintiff/appellant has not been able to establish his prima facie title in the suit property. Ld. Court below also observed that mere apprehension cannot be the basis of an emergent situation where relief of Court may be sought for in the form of injunction and on that ground Ld. Court below refused the ad-interim injunction.

In this Court, the appellant/plaintiff has preferred the instant Misc. Appeal with separate prayer for ad-interim injunction under order 39, Rule 1 read and 2 with Section 151 CPC.

It has been contended by the Learned Advocate appearing for the appellant/plaintiff that the name of the vendor of the appellant/plaintiff was recorded in the LR Records of Rights in respect of plot No., 345 and from said Sefali Chowdhury sold her entire share in the suit property to the plaintiff/appellant by way of registered deed of sale dated 31.08.2023 and now, the plaintiff/appellant is the owner and possessor of the suit property. He further submitted that the appellant has a good prima facie case in his favour and the balance of convenience and inconvenience for granting the order of injunction is in his favour. He has prayed for an order of ad-interim injunction restraining the Respondent Nos. 1 to 3 from changing the nature and character of the suit property and from disposing him from the suit land, from disturbing the peaceful possession of the plaintiff/appellant and also creating 3rd party interest over the suit plot till disposal of the appeal.

Perused the application under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. and the case record. Also perused the documents submitted by the appellants/plaintiffs.

Heard learned Advocate appearing for the appellant/plaintiff.

It is settled position that for an order of injunction, applicant has to satisfy before this Court that he has a prima facie case in his favour, balance of convenience and inconvenience is in his favour and he will suffer injury, if the prayer for injunction is not allowed.

On perusal of the injunction application and the documents submitted by the appellant i.e. Registered deed of sale No. I4391 of 2023 and LR Records in respect of Plot No. 345, it prima facie appears that the appellant has right, title and interest over the suit property. Now question is that, if the respondent Nos. 1 to 3 are not restrained from changing the nature and character of the suit property and if appellant/plaintiff succeeds in trial, then such situation will lead multiplicity of proceedings. Therefore, it appears that the appellant has prima facie case and if an order of injunction is not passed at this stage, there would be irreparable loss to the appellant/plaintiff. Considering the principle of trinity i.e. prima facie case, balance of convenience and inconvenience and irreparable loss and injury, this court thinks that, it would be proper to give interim protection to the plaintiff/appellant.

Hence it is

Ordered

that the ad-interim Injunction as prayed for, is allowed.

The Respondent Nos. 1 to 3 are hereby restrained by an order of ad-interim injunction from changing the nature and character of the suit property till 04.11.2024.

Issue notice calling upon the respondent Nos. 1 to 3 to show cause within seven(7) days from the date of receipt of the same as to why the prayer for temporary injunction made by the appellant against them shall not be granted.

Appellant is directed to comply with the provision of Order 39 Rule 3(a)(b) C.P.C.

Requisites at once.

To date (04.11.2024) for S.R./A.D. and LCR.

Dictated and corrected by me.

District Judge, Msd.

District Judge, Msd.