

In the Court of District Judge, Murshidabad.

Present: Sri Puspall Satpathi, (J.O. WB01301)
District Judge, Murshidabad. (In-Charge)

Misc. Appeal 38 of 2024
WBMD01-010886-2024

Order No. 2, dtd. 10.12.2024

The case record is put up by petition.

Ld. Advocate for the Appellants is also found present.

The matter being moved 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 07.10.2024 in Partition Suit No. 461 of 2024 and other documents filed through firstly. Considered. Admit.

Call for the L.C.R. Issue notice upon the respondents.

Requisites at once.

Now the application under order 39, Rule 1 read with section 151 CPC being moved by the Ld. Advocate for appellant is taken up for hearing.

Heard submission of the Ld. advocate for the appellants.

The case of the plaintiff/appellant is that plaintiff/appellant has become owner and possessor of the suit property to the extent of 4 anna share in the suit being L.R. Plot no. 202 by way of registered deed of sale 30.01.1962 and by way of deed of gift and his name has been recorded in the L.R. Record of rights. It is further case of the plaintiff that the plaintiff/appellant and the defendants/respondents are the co-sharers in respect of the suit property and they are enjoying the suit property in ejmali. Now the defendant/respondent nos. 3 and 4 are trying to construct residential house on the best portion of the suit property in excess of their share and also trying to change the nature and character of the suit property and if the defendant/respondent Nos. 3 and 4 are succeeded the plaintiff/appellant will suffer irreparable loss and injury and the purpose of the appeal will be frustrated. As such, the plaintiff/appellant prays for ad-interim injunction restraining the defendant/respondent nos. 3 and 4 from making any construction and from changing the nature and character of the suit property.

Considered. Perused the certified copy of the impugned order dtd. 07.10.2024 passed by Ld. Civil Judge (Jr. Divn.), 2nd Court, Berhampore in Partition Suit NO. 461 of 2024 and the several documents filed by the appellant this day.

Now, it is admitted position that to get an order of injunction, applicant has to satisfy before this Court that they have a prima facie case in their favour, balance of convenience and inconvenience is in their favour and they will suffer injury, if the prayer for injunction is not allowed.

Prima facie it appears that the plaintiff/appellant has right, title and interest over the suit property in respect of 4 annas share and he is co-share in respect of the suit property.

Having considered the submissions made by the appellant and on consideration of the materials on record and relevant laws, it appears to this court that this is a fit case where injunction should be allowed, otherwise, the appellant would sustain irreparable loss which cannot be compensated in monetary term. The balance of convenience and inconvenience also seems to be in favour of the appellant.

Therefore, testing the prayer on the principle of trinity of injunction, 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.

Both parties are directed to maintain *status quo* in respect of nature and character of the suit property **till 09.01.2025.**

Issue notice calling upon the respondent Nos. 3 and 4 to show cause within 14 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 (09.01.2025) for S.R., A.D. of notice and TCR.

D/C by me

District Judge, Murshidabad

District Judge, Murshidabad