

P.S. 453 of 2023
CNR No. WBMD06-000509-2023

Order No. 02 / Dated 25.07.2023:-

The plaintiff moves the petition under O-39 R 1&2 read with Sec-151 CPC.

Heard Ld. Advocate for the plaintiff.

Issue notice upon the Principal Defendant nos. 1-5 directing them to show-cause within 15 days of receiving the same as to why the Plaintiff's prayer for temporary injunction shall not be granted.

As per endorsement of Sheristadar, no caveat is pending.

The plaintiff's case is that Rahim Sk was the owner and possessor of 16 annas shares in the suit property. On the death of him, his three sons, namely, Masim Sk, Budhu Sk and Salimuddin Sk inherited 1/3rd shares being his legal heirs in the suit property. The name of Masim Sk is recorded in the LR khatian no. 872 and 867. On the death of Masim Sk, his shares devolved upon his six sons i.e., plaintiff and defendant nos. 1-5 and three daughters- defendant nos. 6-8. In this way, defendant nos. 6-8 have 1/45 shares each and plaintiff and defendant nos. 1-5 have 2/45 shares each in the suit property. The owners of rest portion of the suit property are the principal defendant nos. 9-13. The suit property is ejmali property and is not partitioned. Now, the Principal Defendant nos. 1-5 are threatening to dispossess the plaintiff and are threatening to raise new construction over the best portion of the suit property. When the plaintiff asked for amicable partition of the suit property, these Defendants refused. If these defendants are successful in their effort, the Plaintiff will suffer irreparable loss and injury. Accordingly, the Plaintiff has prayed for passing an order of ad-interim injunction against the Principal Defendant nos. 1-5.

Perused the photocopies of documents filed by the plaintiff and materials on record. It prima facie appears that the plaintiff has acquired title over the suit property by way of inheritance. Nothing prima facie appears before this court to show that the suit property is partitioned. As such, it appears to this court that the plaintiff has strong prima facie case to proceed with. However, it appears to this court that if the possession and nature and character of the suit property is not protected at this stage, it will cause irreparable loss and injury to the plaintiff and will also lead to multiplicity of proceedings. Hence, this court finds it urgent to protect the suit property at this ad interim stage.

Hence, it is,

ORDERED

that the plaintiff and the Principal Defendant nos. 1-5 are directed to maintain status quo in respect of the nature, character and possession over the suit property till 13.05.2024.

The plaintiff are directed to comply with the provisions laid down under O-39 R 3(a) and (b) CPC at once.

Dictated & Corrected by me.

C.J (Sr. Divn.), Lalbagh, Msd.
J.O. Code – WB1116.

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