

P.S-84 of 2022
Reg. No. 84 of 2022
CNR No. WBMD06-000091-2022

Order No. 08 / Dated 08.08.2022:-

Today is fixed for filing reply by the defendant in respect of interrogatories regarding necessary parties and properties and for injunction hearing. Both the plaintiffs and defendant nos. 1-3 are present by filing hazira.

But from materials on record, it appears that though defendant nos. 1-3 have filed hazira, however, they have not filed any reply in respect of interrogatories of the plaintiffs. For ends of justice, this court is giving one more chance to the defendant nos. 1-3 to file reply in respect of interrogatories.

It appears this court that the said interrogatories relate to curing of defect of parties and properties. As the plaintiffs are taking initiative to cure the defect of parties and properties, but it is for the defendants, the delay occurs in such rectification, and keeping in mind the settled position of law that the plaintiffs have liberty to cure the defect of parties and properties at any stage of the trial and also considering the urgency of the plaintiffs, the injunction petition is taken up for hearing. This court, however, is inclined to restrain the defendants from raising the point of defect of parties during the hearing of injunction petition as they have not yet submitted reply in that respect.

The record is taken up for injunction hearing in presence of both sides.

Learned Advocates of both sides are present.

On perusal of the materials on record, it appears that the Plaintiffs' case, in short, is that the original owners of the suit property were Jayaher Chowdhury and Dhuku Chowdhury, each having equal shares. On the death of the said Jayaher Chowdhury, his share in suit property devolved upon his only legal heir, Gita Chowdhury, who in turn, transferred 7.5 decimals of land out of her share in suit property in favour of plaintiff no. 2. The name of plaintiff no. 2 got accordingly recorded in the LRROR. The said Dukhu Chowdhury, while owning and possessing his share in the suit property, transferred 6 1/3 decimals of land out of his share in favour of one Mamata Roy, who in turn, transferred 5 decimals out of her 6 1/3 decimals in suit property in favour of plaintiff no.1. The said Dukhu Chowdhury again transferred 5 decimals of land out of his remaining share in favour of one Panchanan Roy, who in turn, sold the same to plaintiff no.1. In this way, plaintiffs jointly have 17.5 decimals of land in suit property. The principal defendants are owners of the rest portion of the suit property. The plaintiffs further contended that the suit property is an ejmali property and the defendant nos. 1 to 3 are trying to oust the plaintiffs from the suit property and are threatening to raise new construction over the best portion of the suit property exceeding their share and also threatening to transfer the same. As such, the plaintiffs approached defendant nos-1-3 and requested them for amicable partition of the suit property but in vain. If the defendant nos. 1-3 get successful in their effort, the plaintiffs will suffer irreparable loss and injury. As such, the plaintiffs have prayed for passing an order of temporary injunction against the defendant Nos. 1 to 3.

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The Defendant Nos. 1 to 3 appeared and contested the application by filing W.O denying all material allegations and had contended that defendant no.1 had got 12.5 decimals of land in suit property and while, owning the same had transferred 2.75 decimals of land to each defendant no.2 and 3. LRROR got recoded accordingly. The defendants also stated tat the suit property has already been partitioned. As such, the defendants pray for dismissal of the application for temporary injunction.

Heard Learned Advocates of both sides.

Perused the pleadings, application, written objection and documents filed by the parties. It prima-facie appears that the plaintiffs had acquired right, title and interest over the suit property by virtue of purchase from the legal heir of one of the original owner Jayaher Chowdhury and from another original owner- Dukhu Chowdhury. From the documents of the defendants, it prima-facie appears that the defendants are in possession of certain portion of the suit plot, which is not disputed by the plaintiffs. Nothing prima-facie has come before this court to show that the suit property had already been partitioned. .

It is to be mentioned here that whether the plaintiffs have right, title and interest in respect of the entire share as they claimed over the suit property is to be determined at the stage of trial after consideration of evidence.

Therefore, at this preliminary stage, it appears to this court that the plaintiffs have strong prima-facie case to be proceeded with. It further appears that if the suit property is not preserved at this stage by passing an order of temporary injunction, it may cause irreparable damage to either parties and may lead to multiplicity of proceedings.

Hence it is,

ORDERED

that the prayer for temporary injunction is allowed on contest.

Both the plaintiffs and defendant nos.1- 3 are directed to maintain status quo in respect of the nature, character and possession over the suit property till the disposal of the suit.

To 03.05.2023 for S/R in respect of pro-forma defendant nos. 4 and 5. Plaintiffs are directed to take steps upon defendant nos. 7 -16 and appearance in respect of pro-forma defendant nos. 4 and 5 at once.

Defendant nos. 1-3 are directed to file reply in respect of interrogatories of the plaintiffs as last chance in default necessary order.

Dictated & Corrected by me.

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

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