

P.S- 66/2019

CNR No. WBMD06000105-2019

Order No. 13 Dated 04.12.2023:-

Today is fixed for passing order in respect of the petition of temporary injunction. The plaintiffs are present by filing hazira.

The record is taken up for passing order.

Learned Advocates for both sides are present.

On perusal of the materials on record, it appears that the Plaintiff's case, in short, is that one Sahebjan Bewa was one of the owner in suit plot no. 791. He sold 41.25 decimals in the suit plot no. 791 to one Abul Kasem Sk. One Abdul Hannan Mondal was one of the owner in respect of suit plot no. 793. He also sold 17 decimals in suit plot no. 793 to the said Abul Kasem Sk. He again sold 20 decimals in suit plot no. 793 to Abul Kasem Sk. One Din Mahammad Bari was one of the owner in respect of suit plot no. 798. He transferred 33 decimals in suit plot no. 798 to one Ajeman Bewa by way of sale. While owning and possessing his shares in suit plot no. 791 and 793, the said Abdul Kasem Sk leaving behind his widow- plaintiff no. 1, four sons – plaintiff nos. 6, 7 and defendant nos. 1-2 and four daughters – plaintiff nos. 2-5 as his legal heirs, who in turn inherited his shares in the suit plots. On the demise of the said Ajeman Bewa, her share in suit plot nos. 798 devolved upon her four sons – Abul Kasem Sk, Eshad Ali Sk, Masem Sk and Asmat Sk and her four daughters. As such, plaintiffs and defendant nos. 1 and 2 inherited the share of Abul Kasem Sk in suit plot no. 798 on his demise. It is averred by the plaintiffs that the suit property is an ejmali property and has not yet been partitioned. There are houses of the co-sharers, fruit trees and vacant place in the suit property. However, the defendant nos. 1 and 2 are trying to make new construction forcefully and illegally in the suit property. As such, finding difficulty in ejmali possession of the suit property, the plaintiff approached the defendant nos. 1 and 2 for amicable settlement but in

vain. Therefore, finding no other alternative, the plaintiff has filed the instant suit and the instant application for temporary injunction.

Though the defendant nos. 1 and 2 appeared to contest the injunction petition but even after getting opportunity repeatedly, they abstained themselves from contesting the injunction application. Hence, the injunction petition is taken up for hearing in exparte.

Heard Learned Advocate for the plaintiff.

Perused the pleadings, petition, documents filed by the plaintiff and other materials on record.

From the documents filed by the plaintiff, it prima-facie appears that the predecessor-in-interest of the plaintiffs had acquired share in the suit plot no. 793 and 791 by way of purchase and in suit plot no. 798 by way of inheritance. It also prima facie appears, the plaintiffs have acquired share in the three suit plots along with defendant nos. 1 and 2 by way of inheritance. However, nothing has come before this court to prima-facie show that the suit property has ever yet been partitioned. As such, it prima-facie appears to this court that the plaintiffs have strong prima-facie case to be proceeded with.

Has it been so, from the point of balance of convenience and inconvenience and hardship, save and except an order of status quo as regard existing nature, character and possession of the suit property, of course with some specific direction, as may be formulated below, any other order may cause hardship to either side thereby leading to irreparable damage to either parties and may lead to multiplicity of proceedings.

Hence it is,

ORDERED

that the application for temporary injunction is hereby disposed off in exparte without cost.

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Both the plaintiff and defendant nos. 1 and 2 are hereby directed to maintain status quo as regard the existing nature, character and possession in the suit property and save and except repairing works only in the existing construction within their respective portion in possession but shall not make any new construction over the vacant portion of the suit property till the disposal of the suit.

To 23.04.2024 for ex parte hearing of the suit in respect of defendant nos. 1 and 2 and S/R upon defendant nos. 3-5.

Plaintiffs are directed to take fresh steps upon defendant nos. 3-5 at once.

Dictated & Corrected by me.

C.J (Sr. Divn.), Lalbagh, Msd.

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