

P.S. 137 of 2019
CNR No. WBMD06-000175-2019

Order No. 09 / Dated:- 17.02.2022.

Record is put up on prayer of Plaintiffs.

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

Heard Ld. Advocate for the Plaintiffs.

Issue notice upon the Defendants directing them to show-cause within 15 days of receiving the same as to why the Plaintiffs' prayer for temporary injunction shall not be granted.

As per endorsement of Sheristadar, no caveat is pending.

The Plaintiffs' case is that Manik Mondal had 13 anna 6 gonda 2 kora 2 kranti share and Srimanta Mondal had 2 anna 13 gonda 1 kora 1 kranti share in 'Ka' schedule property and their names have been recorded in RSROR. Manik Mondal transferred 09 dec to Srimanta Mondal by registered Sale Deed dtd. 23.02.1959. Thus, Srimanta Mondal had 13- ½ dec land in the suit property. Manik Mondal transferred 13- ½ dec to Debilal Mondal. Srimanta Mondal transferred 03 dec to Raghunath Mondal, father of the Plaintiffs, by registered Gift Deed dtd. 15.06.1974 and delivered possession. On death of Srimanta Mondal, his rest 10- ½ dec devolved upon his sons i.e. the Raghunath Mondal and Niranjana Mondal, the father of Defendant Nos. 1 & 2. Thus, they acquired 4- ¼ dec each in the suit property. Thus, the father of the Plaintiffs acquired total 8- ¼ dec land in the suit property. The father of the Plaintiffs was a simple village man and worked at Katwa under Railway Department. At the time of recording his name in LRROR, he was not present at his house and the father of Defendant Nos. 1 & 2 and one Dulal Mondal told him to execute one Power of Attorney in favour of the father of Defendant Nos. 1 & 2 to record his name in LRROR and also told him to provide the original Gift Deed and Sale Deed to them for recording his name in LRROR. Thereafter, the father of the Plaintiffs executed one Power of Attorney in favour of his brothers i.e. the father of Defendant Nos. 1 & 2 and also gave the said original Deeds to his brothers. Thereafter, after transferring at Azimganj from Katwa, the father of the Plaintiff asked his brothers about the LRROR and they replied that their names have been recorded in LRROR and when the father of the Plaintiffs wanted back the said Deeds, his brothers told that the same have been lost. Thereafter, on 10.03.2019, when the Defendant Nos. 1 & 2 were trying to raise new construction over the suit property on more than their share, the Plaintiffs raise objection but the Defendant Nos. 1 & 2 did not pay any head to them and told that they acquired 9- ¼ dec land in the suit property by way of Partition Deed dtd. 03.05.1990. Then, the Plaintiffs came to know that the Defendants executed the said Partition Deed illegally which is void, void abinitio, baseless. The said Deed is challenged Deed and the details of the same is mentioned in 'Kha' schedule. The father of the Plaintiff was in possession of 8- ¼ dec land in the suit property. The suit property is an ejmali property and the parties are co-sharers. Now the Defendants are trying to raise new construction over the best portion of the suit property and also trying to cut down the valuable trees of the suit property. If the Defendants are successful in their efforts, the Plaintiffs will suffer irreparable loss and injury. Accordingly, the Plaintiffs have prayed for passing an order of ad-interim injunction against the Defendants.

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Perused the Deeds and LRROR. This is a suit for partition of ejmali property. It prima facie appears that the Partition Deed challenged by the Plaintiff dealt with some portion of the suit plots and not the entire quantum of the suit plot nor regarding the portion of other co-sharers. However, whether the alleged Partition Deed is void or not can be determined only after appreciation of evidence. As such, it appears to this court that Plaintiff has prima facie case and if the Defendants are not restrained to raise construction over the best portion of the suit property, it will cause irreparable loss and injury to the Plaintiff and will increase the chance of multiplicity of proceeding.

Hence, it is,

ORDERED

that the Plaintiffs and the Defendants are directed to maintain status quo in respect of the nature, character and possession over the suit property till 12.04.2022.

The Plaintiffs 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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