

P.S. 149 of 2023
CNR No. WBMD06-000191-2023

Order No. 02 / Dated 16.03.2023:-

Plaintiffs file a petition under Order 6 Rule 17 C.P.C for amendment of Plaintiff.
Plaintiffs move the petition.

Heard.

It is stated by the Plaintiff that he has filed the present suit for partition and during the drafting the Plaintiff, mistakenly the name of Plaintiff No. 1 i.e., Milan Sk has been written in place of Silan Sk in the Cause Title of Plaintiff and hence, it is necessary to rectify the same or else the Plaintiffs will be highly prejudiced. Perused the record.

It appears that vide the amendment the Plaintiff seeks to correct the mistake occurred in the Cause Title of Plaintiff and the same is formal in nature and will not prejudice the Defendants and it will not change the nature and character of this suit. For proper and final adjudication of the suit the proposed amendment in the plaintiff necessary.

Hence, it is,

ORDERED

that the petition under Order 6 Rule 17 CPC filed today by the Plaintiffs is hereby allowed.

Let the cause tile of the Plaintiff be amended accordingly.

Dictated & Corrected by me.

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

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Later:

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 Principal Defendant nos. 1 and 2 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 Plaintiffs' case is that Khodabaksh Sk was the owner and possessor of 09 decimals shares in the suit property. His name was recorded in the LRROR. He transferred 1 ½ decimal to defendant no. 3. Thereafter, he transferred 2 decimals shares to his wife- Matina Bibi by way of registered Hebanama Deed. Khodabaksh Sk and his wife Matina Bibi transferred their 7 ½ decimals to their sons i.e., the plaintiffs by way of registered Deed of Hebanama. Their names are recorded in the LRROR in respect of 7 ½ decimals in the suit property. The suit property is ejmali property and is not partitioned by metes and bounds. Now, the Principal Defendant nos. 1 and 2 are threatening to dispossess the Plaintiffs and are threatening to raise new construction over the best portion of the suit property. When the Plaintiffs 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 and 2.

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Perused the photocopies of documents filed by the Plaintiffs and materials on record. It prima facie appears that the Plaintiffs have acquired title over the suit property by way of heba. Nothing prima facie appears before this court to show that the suit property is partitioned. As such, it appears to this court that the Plaintiffs have 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 Plaintiffs 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 Plaintiffs and the Principal Defendant nos. 1 and 2 are directed to maintain status quo in respect of the nature, character and possession over the suit property till 16.10.2023.

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.

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