

P.S 209/19

Order No.02 /Dated:-02.07.2019

Plaintiff moves the petition under O-39 Rule 1&2 read with Sec-151 CPC praying for ad interim injunction. Heard Ld. Advocate for the Plaintiff.

Issue notice upon the Defendants are 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.

The Plaintiffs' case is that 1.78 acre of suit property, having raasta on its adjacent north south and east, belonged to Paban Kumari. Srimal and he transferred 65 decimal and 66 decimal to Dhananjay Mondol and Arjun Mondol vide registered Deeds dt. 20.12.85 and 17.02.86 respectively. The name of Dhananjay Mondol was recorded in LR Khatian No. 1002. On death of Arjun Mondol his share devolved upon his son and daughters I.e Plaintiff No. 3 and Defendant No. 4 to 8 in equal share. The Defendant No. 4 to 8 resides in their matrimonial home. On death of Dhananjay Mondol his share devolved upon sons I.e Plaintiff No. 1 and 2.

The Plaintiff Nos. 1 and 2 thus have 65 decimal in the suit property, Plaintiff No. 3 has 11 decimal and the rest belongs to the Defendants No. 1 to 8. Arjun Mondol resided with Defendant No.3 and was an illiterate person. The suit property is an undivided property and the parties are in eamal possession. The Plaintiff No. 3 he residing over the suit property by building a hut. On 05.01.19 the Defendants expressed that they would raise construction over best portion since Arjun Mondol transferred 66 decimal of suit property along with other property to the Defendant No. 4 to 8 vide the Kha – schedule Deed. The said Arjun Mondol treated all his children equally and was able to sign to name only. The Kha schedule Deed was read to him and the same was void ab initio. The Defendant No. 4 to 8 never acquired any right, title, interest over the suit property on account of such Deed. Now the Defendants are now trying to raise construction over the best portion of the suit of the suit property. When the Plaintiffs asked for amicable partition the Defendant refused. Thus the instant petition. If the Defendants are successful in their effort the Plaintiffs will suffer irreparable loss and injury. Accordingly, the Plaintiffs have prayed for passing an order of ad-interim injunction against the Defendants.

Perused the LRROR in name of Dhananjay Mondol and the Deeds. On affidavit the Plaintiff stated that the Defendants are trying to change, nature and character of suit property. Considering the above aspects and the documents, I think that the Plaintiffs have a prima facie case and will suffer irreparable loss and injury if the Defendants are successful in their efforts. There is a necessity to preserve the suit property or else multiplicity suits will arise.

Hence it is,

ORDERED

Both the Plaintiff and the Defendants are directed to maintain status quo in respect of the nature, character and possession in respect of the suit property till 01.08.19 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.

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Later:- Order No.02 /Dated:-02.07.2019

Plaintiff moves the petition u/o.39 rule 7 CPC dt. 31.05.19.

Heard Ld. Advocate for the Plaintiff. Perused the petition.

It appears from the petition filed u/o-39 Rule 7 C.P.C for local inspection that the Defendants are trying to raise construction over the suit property forcibly and are trying to change the nature and character and hence Local Inspection petition is necessary to know the real state of affairs.

Having regard to the submission and on perusal of the petition I find Local Inspection petition is necessary.

Hence, it is,

ORDERED

That the petition filed u/o-39 Rule 7 C.P.C by the Plaintiff on 11.12.18 is hereby allowed.

Let Sri Khalafat Hossain / Ld. Advocate be appointed as a pleader Commissioner for conducting the local inspection. The Plaintiffs are directed to pay Rs.1400/- towards the cost of the Commissioner. The Commissioner shall proceed to the locality for holding local inspection after giving notices to both sides and their Ld. Advocates. The Commissioner shall hold the local inspection on the points mentioned in the petition u/o.39 R 7 CPC after observing all legal formalities. The Plaintiff is directed to supply the copy of local inspection petition and other relevant documents to Ld. Commissioner for the purpose of holding the local inspection. Writ will be issued after payment of the Commissioner's cost.

To date for local inspection report.

Dictated & Corrected by me.

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

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