

P.S. 304 of 2021
CNR No. WBMD060003472021

Order No. 02 / Dated:- 16.08.2021.

Record is put up on prayer of the Plaintiffs.

Plaintiffs file the petitions under Order 6 Rule 17 C.P.C for amendment of Plaint and a petition u/s. 153 CPC for amendment of temporary injunction petition. Plaintiffs move the petitions.

Heard.

It is stated by the Ld. Advocate for the Plaintiffs submitted that the present suit for partition was filed over LR Plot Nos. 681, 684 & 686 but the corresponding RS Plot Nos. being "RS Plot Nos. 618, 621 & 622" have not been inserted in the schedule of the Plaint and the total quantum of land of Suit Plot No. 681 had been written as 25 dec instead and in place of 13 dec and the necessary insertion of the RS Plot No. and correction of quantum of Suit Plot is necessary to be made including that of the Valuation Statement in the petition for Temporary Injunction and the Plaint and 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 Plaintiffs seek to correct the mistakes and the same is formal in nature and will not change the nature and character of this suit. For proper and final adjudication of the suit the proposed amendment in the plaint necessary. Hence, it is,

ORDERED

that the petition under Order 6 Rule 17 CPC and the petitions u/s. 153 CPC filed today by the Plaintiffs are hereby allowed.

Let the Plaint and Temporary Injunction Petition be amended accordingly.

Plaintiffs are directed to file amended copy of Plaint and Temporary Injunction petition.

Later:-

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

Heard Ld. Advocate for the Plaintiffs.

Issue notice upon the Principal Defendant No. 1 directing him 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 the suit property belonged to Kangali Sk. and on his death, it devolved upon his wife i.e. Sakiran Bewa and sons i.e. Ebrahim Sk. & Samser Ali. On death of Ebrahim, his share devolved upon his wife – Momejan Bewa, mother – Sakiran Bewa and son / Defendant No. 1. Samser Ali married the aforesaid Momejan Bewa and from such marriage, the Plaintiffs were born. On death of Samser Ali, his share devolved upon the Plaintiffs and Momejan Bewa. Subsequently, Momejan Bewa also died leaving behind four sons i.e. the Plaintiffs and Defendant No. 1. In his manner, the Plaintiffs have 11 anna 7 gonda 2 kora 1 kranti share in the suit property and are in possession by enjoying the usufructs. The suit property is an ejmali property and the parties are co-sharers. Now the Principal Defendant No. 1 is trying to raise new construction over the best portion of the suit property exceeding his share. When the Plaintiffs asked for amicable partition of the suit property, the Principal Defendant No. 1 refused. If the Principal Defendant No. 1 is successful in his effort, the Plaintiffs will suffer irreparable loss and injury. Accordingly, the Plaintiffs have prayed for passing an order of ad-interim injunction against the Principal Defendant No. 1.

Contd.....

P.S. 304 of 2021
CNR No. WBMD060003472021

Contd.....order No. 02 / Dated:- 16.08.2021.

Perused the RSROR in respect of the suit plots, the LR in the name of Samser Ali and the Khazna Receipts. This is a suit for partition of ejmali property. The Plaintiffs prima facie appears to be a co sharer and stated on affidavit that the Principal Defendant No. 1 is trying to raise new construction over the best portion of the suit property exceeding his share. Suit Plot No. 681 is a water body by nature. Considering the above aspects, I think that the Plaintiffs have a prima facie case and will suffer irreparable loss and injury if the Principal Defendant No. 1 is successful in his effort. There is a necessity to preserve the suit property and urgency or else multiplicity suits will arise.

Hence, it is,

ORDERED

that the Plaintiffs and the Principal Defendant No. 1 are directed to maintain status quo in respect of the nature, character and possession over the suit property i.e. Suit Plot Nos. 684 & 686 till 30.09.2021.

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 – WB00832.

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