

P.S- 391/12
Reg. No. 2012391/12

Order No. 34 / Dated :- 09.12.19.

Defendant files Advocate hazira. On prayer of Plaintiff, the ad interim order of temporary injunction is extended till next date.

Today is fixed for hearing of the Temporary Injunction Petition. Heard both sides in full.

The Plaintiff's case is that the suit property i.e. 65 dec land of Plot No. 877 belonged to Dharendra Narayan Sukul and Smt. Rajlaxmi Sukul and they transferred 32 ½ dec to the Plaintiffs and Principal Defendant Nos. 1-4 by registered Sale Deed dtd. 28.11.1977 and 32 ½ dec to Defendant No. 5 vide registered Sale Deed dtd. 28.11.1977 and delivered possession. As such, the Plaintiffs together have 11 dec in the suit property. The Plaintiffs have dwelling house over some portion as well as the Defendant Nos. 1-3. The suit property is ejmali. The name of the Plaintiffs have been recorded in LRROR. Now the Principal Defendants with ill motive are trying to raise a construction over the best portion of the suit property and have started digging for basement. When the Plaintiffs asked for amicable partition, they refused. As such, the Plaintiffs have prayed for passing an order temporary injunction against the Principal Defendants.

The Principal Defendant No. 1-5 appeared and contested the application by filing W.O denied all material allegations. The Deeds dtd. 28.11.1977 has not been denied. It is stated by the Defendants that Abdus Sattar i.e. Defendant No. 5 and father of Defendant Nos. 1-4 transferred his purchased 32 ½ dec to the Defendant Nos. 1-4 vide registered Deed dt. 25.04.2006. To the adjacent north of the suit property is the Railway track and to the west is th main road and Plot No. 76. The Defendant No. 5 had kaccha dwelling house on the western side of the suit property adjacent to the main road and resided there with his family and the rest was lying vacant. Subsequently, Defendant No. 1 & 2 raised two pucca rooms with tin roof. The Plaintiffs never did there duties towards Defendant Nos. 5 and so he executed the 2006 Deed in favour of Defendant No. 4. The Defendant No. 5 now resides at Kolapur. The Defendant Nos. 1-4 reside in the house constructed by Defendant No. 5 beside the raasta. Now, the Plaintiff has taken forcible possession four such room out of five rooms from the Defendants. The Defendants admitted that the suit property had never been partitioned. The Defendant Nos.1-4 have 54 dec land in the suit property. In such circumstances the Plaintiff's prayer for injunction is liable to be dismissed.

Perused the documents filed by the Plaintiffs as well as the Defendants i.e. their respective purchase Deeds, LR Plot Information, LRROR in the name of Plaintiffs and the Khazna Receipts. None of the Deeds vide which the parties acquired title mentions specific measurement of boundaries. Neither party challenged the title or possession of the others over the suit property. By the admission of the Defendants, the suit property is unpartitioned. The Plaintiff has stated on affidavit that the Defendants are trying to change the nature and character of the suit property by raising construction. It is necessary to preserve the suit property. Without trial it is not possible to resolve the dispute between the parties.

Hence it is,

ORDERED

the Plaintiffs and Principal Defendants are directed to maintain status quo in respect of the nature, character and possession till the disposal of the suit. The ad interim order injunction is hereby made absolute.

Issues are framed in separate sheets and kept with record.

To 03.04.2020 for P.H.

Dictated & Corrected by me.

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

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IN THE COURT OF CIVIL JUDGE(SR. DIVN), LALBAGH,
MURSHIDABAD.

Present:- Smt. Mou Ghatak Majumdar,
Civil Judge(Sr. Divn),
Lalbagh, Murshidabad.

Partition Suit- 391/2012

ISSUES

1. Is the suit maintainable in its present form and in law ?
2. Is there any cause of action to file the suit ?
3. Whether the plaintiff has right, title and interest and possession over the suit property?
4. Is the plaintiff entitled to get decree as prayed for ?
5. To what other relief, if any, is the plaintiff entitled to ?

Civil Judge (Sr. Divn),
Lalbagh, Murshidabad.

Dt. 09.12.2019