

P.S. 355 of 2021
CNR No. WBMD060004082021

Order No. 02 / Dated:- 20.09.2021.

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 Defendant Nos. 1-3 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 Jamsed Sk., Harun Rasid, Soleman Sk. & Azahar Sk. had 4 anna share each in the suit property and their names have been recorded in LRROR. While in possession, Jamsed transferred 16 ½ dec land of Plot Nos. 146, 147, 154, 155, 157 & 158 and also transferred 1 dec of Suit Plot No. 229 of Fakirpur Mouza to his elder daughter i.e. Khadiza Bibi / Plaintiff No. 1 by two separate Heba Deed dtd. 24.04.2001 and by Heba Deed dtd. 09.09.2008. While in possession of his remaining property, he expired and his share devolved upon his son / Defendant No. 1 and two daughters i.e. Serina Bibi & Plaintiff No. 1 i.e. 2 anna, 1 anna & 1 anna respectively as per Mohammedan Law. Thus, while in possession of their respective shares, the Plaintiff No. 1 & Serina Bibi transferred 14.153 dec of Plot No. 4700 & 4695 of Rasulpur Mouza and 17.166 dec of Plot Nos. 303-305, 98 & 100 of Fakirpur Mouza to Plaintiff No. 2 by registered Deed dtd. 28.07.2020. Plaintiff No. 1 & Serina Bibi transferred their remaining share in Plot No. 4700 of Rasulpur i.e. 6.60 dec to Plaintiff No. 3 by registered Deed dtd. 28.07.2020. The Defendant No. 1 transferred his share to his sons i.e. Defendant Nos. 2 & 3. In spite of that, he got his name recorded in respect of 4 anna share by posing the sole heir of Jamsed Sk. The LR in name of Defendant No. 1 is erroneous. The remaining property belongs to the Defendants. The suit property is an ejmali property and the parties are co-sharers. Now the Defendant Nos. 1-3 are trying to raise new construction over the best portion of the suit property on more than their share. When the Plaintiffs asked for amicable partition of the suit property, the Defendant Nos. 1-3 refused. If the Defendant Nos. 1-3 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 Defendant Nos. 1-3.

Perused the ROR Khatian No. 247 as also one Khatian No. 84 & 1585 in name of Jamsed Sk. in respect of the suit plots except the plot no. 4695 of Rasulpur Mouza and the Deeds by which the Plaintiffs acquired share in the suit property. 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 Defendant Nos. 1-3 are trying to raise new construction over the best portion of the suit property on more than their share. Considering the above aspects, I think that the Plaintiffs have prima facie case and will suffer irreparable loss and injury if the Defendant Nos. 1-3 are successful in their efforts. There is a necessity & urgency to preserve the suit property or else multiplicity suits will arise. Hence, it is,

ORDERED

that the Plaintiffs and the Defendant Nos. 1-3 are directed to maintain status quo in respect of the nature, character and possession over the suit property (except the plot no. 4695 of Rasulpur Mouza) till 06.12.2021.

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.

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