

P.S. 565 of 2022
CNR No. WBMD06-000874-2022

Order No. 02 / Dated:- 23.09.2022.

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 Plaintiffs that in the Plaint and petition for temporary injunction, it is mentioned that Plaintiff No. 7 and Defendant No. 2 acquired share in the suit property by way of inheritance and Deed. But Plaintiff No. 7 and Defendant No. 2 are the same and identical person. Accordingly, 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 mistake 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 plaint necessary.

Hence, it is,

ORDERED

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

Plaintiffs file amended Plaint and Temporary Injunction Petition. Let the same be kept with the record.

Dictated & Corrected by me.

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

J.O. Code – WB1116.

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

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. 2-7 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 Bhabesh Chandra Ghosh and Abhilash Ghosh had equal share in the suit property and their names have been recorded in RSROR. Bhabesh Chandra Ghosh transferred 4 dec to Atasibala Ghoshani by registered Sale Deed dated 17.03.1972. Abhilash Ghosh died leaving behind his wife i.e. Annadabala Ghosh as his legal heirs. Annadabala Ghosh transferred her 4 dec to Atasibala Ghoshani by registered Deed dated 17.03.1972. Atasibala Ghoshani transferred 6 dec to Defendant Nos. 1 & Plaintiff No. 7 by registered Gift Deed dated 29.06.1981 and delivered possession. Atasibala Ghoshani also

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transferred her rest 2 dec to Defendant Nos. 1 & Plaintiff No. 7 by registered Deed dated 30.09.1992. Defendant Nos. 1 & Plaintiff No. 7 transferred 2 dec to Atasibala Ghoshani by registered Deed dated 10.09.1997. Atasibala Ghosh died leaving behind the Plaintiffs as her legal heirs. In this manner, Plaintiff No. 7 acquired 3 dec by way of Deed and the Plaintiffs acquired 2 by way of inheritance. Thus, the Plaintiffs together have 5 dec land in the suit property. The rest property belongs to Defendant No. 1. The Principal Defendant Nos. 2-7 have no right, title and interest over the suit property though mistakenly their names have been recorded in LRROR in respect of some portion of the suit property. The Plaintiffs have applied for recording their names in LRROR before appropriate authority. The suit property is an ejmali property and the parties are co-sharers. Now the Principal Defendant Nos. 2-7 are trying to raise new construction over the best portion suit property on more than their share. When the Plaintiffs asked for amicable partition of the suit property, the Principal Defendant Nos. 2-7 refused. If the Principal Defendant Nos. 2-7 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 Principal Defendant Nos. 2-7.

Perused the photocopies of documents filed by the Plaintiffs and materials on record. It prima facie appears that the Plaintiffs have title over the suit property by way of inheritance and Deed. Nothing prima facie has come 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. 2-7 are directed to maintain status quo in respect of the nature, character and possession over the suit property till 17.02.2023.

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.