

P.S. 20 of 2023
CNR No. WBMD06-000020-2023

Order No. 02 / Dated:- 16.01.2023.

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 Defendants 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 Hasarat Sk., Jaynal Sk., Nesarat Sk. and Hesarat Sk. were the owners in the suit property. Hasarat Sk. had 38- ½ dec in the suit property and while in possession, he died leaving behind his two sons i.e. Ekram Ali & Malik Sk. and wife i.e. Hazera Bewa as his legal heirs and successors. Ekram Ali transferred his 16.845 dec to Manuara Bibi. There was an agreement between Ekram Ali and Manuara Bibi in respect of sell of 8.45 dec and thereafter, the said share specifically acquired by Government of West Bengal by case No. R.A. 24/1959. Manik Sk. transferred 15 dec to Janid Harun and Abur Basi. Hazera Bewa died leaving behind Ekram Ali and Manik Sk. as her legal heirs and successors. Thereafter, Ekram Ali died leaving behind Abdul Hakim, Plaintiff No. 3, Khurma Bibi and others as his legal heirs and successors. Thereafter, Khurma Bibi and others transferred their share to Plaintiff No. 3 by registered Heba Deed dated 23.03.2022 and delivered possession. On death of Manik Sk., his share devolved upon Abdul Rajjak and others. Abdul Hakim transferred his share to Plaintiff Nos. 1 & 2 by registered Sale Deed dated 18.05.2022. Thereafter, Abdul Hakim and Abdul Rajjak and others transferred their share to Plaintiff Nos. 1 & 2 by registered Deeds dated 07.06.2022 & 28.02.2022. The suit property is an ejmali property and the parties are co-sharers. Now the Principal Defendants are threatening to dispossess the Plaintiffs and are threatening to raise new construction over the best portion of the suit property exceeding their share and are also threatening to transfer the suit property. When the Plaintiffs asked for amicable partition of the suit property, the Principal Defendants refused. If the Principal Defendants 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 Defendants.

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 Defendants are directed to maintain status quo in respect of the nature, character and possession over the suit property till 10.03.2023.

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.

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