

P.S. 816 of 2022
CNR No. WBMD06-001157-2022

Order No. 02 / Dated:- 21.12.2022.

Plaintiff files the petitions under Order 6 Rule 17 C.P.C for amendment of Plaintiff and a petition u/s. 153 CPC for amendment of temporary injunction petition. Plaintiff moves the petitions.

Heard.

It is stated by the Plaintiff that he has filed the present suit for partition and during the drafting of the Plaintiff, mistake occurred in the Cause Title and body of Plaintiff regarding the name of Plaintiff and also in the petition for Temporary Injunction and it is necessary to insert the same or else the Plaintiffs will be highly prejudiced. Perused the record.

It appears that vide the amendment the Plaintiff seeks to correct the mistake occurred in the Plaintiff 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 Plaintiff necessary.

Hence, it is,

ORDERED

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

Let the Plaintiff and Temporary Injunction Petition be amended accordingly.

Plaintiff is directed to file amended copy of Plaintiff and Temporary Injunction petition.

To date for filing amended Plaintiff and Temporary Injunction Petition.

Dictated & Corrected by me.

C.J (Sr. Divn.), Lalbagh, Msd.
J.O. Code – WB1116.

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

Later:-

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

Heard Ld. Advocate for the Plaintiff.

Issue notice upon the Principal Defendant Nos. 1-9 directing them to show-cause within 15 days of receiving the same as to why the Plaintiff's prayer for temporary injunction shall not be granted.

As per endorsement of Sheristadar, no caveat is pending.

The Plaintiff's case is that Ramayan Mahato was one of the owners in the suit property and while in possession, he transferred 0.0372 acr land to Dashrath Mahato by registered Sale Deed dated 03.05.2005. Thereafter, Dashrath Mahato transferred his 3.72 dec to the Plaintiff by registered Sale Deed dated 22.07.2015. The name of Plaintiff is recorded in LR Khatian No. 610. The suit property is an ejmali property and the parties are co-sharers. Now the Principal Defendant Nos. 1-9 are trying to raise new construction over the best portion of the suit property exceeding their share and have accumulated the building materials for such construction work. If the Principal Defendant Nos. 1-9 are successful in their efforts, the Plaintiff will suffer irreparable loss and injury. Accordingly, the Plaintiff has prayed for passing an order of ad-interim injunction against Principal Defendant Nos. 1-9.

Perused the photocopies of documents filed by the Plaintiffs and materials on record. It prima facie appears that the Plaintiff has title over the suit property by way of purchase. Nothing prima facie appears before this court to show that the suit property is

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partitioned. As such, it appears to this court that the Plaintiff has 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 Plaintiff 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 Plaintiff and the Principal Defendant Nos. 1-9 are directed to maintain status quo in respect of the nature, character and possession over the suit property till 09.06.2023.

The Plaintiff is 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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Later:-

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Plaintiff moves the petition u/o. 39 rule 7 CPC dtd. 16.12.2022.

Heard Ld. Advocate for the Plaintiffs. Perused the petition.

It appears from the petition filed u/o-39 Rule 7 C.P.C for local inspection that the Principals Defendants are trying to raise new construction over the best portion of the suit property forcibly. Thus, the Local Inspection petition is necessary to know the actual present status of the suit property.

Having regard to the submission and on perusal of the petition, this court is of the view that the Local Inspection petition is necessary in respect of point nos. 1-4 of the local inspection petition.

Hence, it is,

ORDERED

that the petition u/o. XXXIX rule 7 CPC filed by the Plaintiff is hereby allowed.

Let Mahendra Shaw be appointed as a pleader Commissioner for conducting the local inspection. Ld. Advocate Commissioner is directed to hold the local inspection in respect of point nos. 1-4 of the local inspection petition after serving notice on both parties and their respective Advocates and after observing all legal formalities.

The Plaintiff is directed to pay Rs. 1,600/- as provisional cost of the Commissioner.

The Plaintiff is also directed to supply the copy of local inspection petition and other relevant documents to Ld. Commissioner for holding the local inspection.

Writ will be issued after payment of the Commissioner's cost.

To date for Commissioner's report.

Dictated & Corrected by me.

C.J (Sr. Divn.), Lalbagh, Msd.
J.O. Code – WB1116.

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