

order no-2 dated 08/09/16

The record is put up before me as the learned advocate for the plaintiff moved the application filed under order 39 rules 1 2 & 3 of the code of civil procedure read with section 151 of the code of civil procedure for an order of ad interim injunction against the defendants.

This is a suit for declaration and permanent injunction. No caveat is lying pending as per note of the Sheristadar.

Heard learned advocate for the plaintiff who submits that the suit property is undivided dwelling house. The defendants no. 1 & 2 have transferred their portion in favour of defendant no. 3 and 4 . The defendant no. 3 and 4 are stranger person. If they able to enter into the suit property , the privacy of the dwelling house will be discarded.

I have gone through the instant application supported by an affidavit, documents filed by the plaintiff and the materials available on record, it appears to me that a suit being no. 68/2011 (os) was instituted by plaintiff against the defendant no. 3 and 4. That suit was finally disposed of by way of solenama. In that solenama in para no. 3 it was decided that except plot no. 8639 the remaining plot are undivided dwelling house of plaintiff and defendants are stranger person. In that suit it was admitted that the plot no. 8639 is not undivided dwelling house. Then how the plaintiff filed the instant suit claiming that the suit plot is an undivided dwelling house. The plaintiff is being estopped from taking such plea by filing another suit . That matter has already been decided on admission of parties in that suit .

Considering the above facts and circumstances I find that the plaintiffs have failed to make out prima facie case. I also don't find any urgency to pass any restrained without of hearing to the other side. Where the plaintiffs did not produce any documents relating to title, it seems to this court that if any restrained order be passed without hearing to the other side that may cause inconvenience to the other side.

Hence, it is

Ordered

that the ad-interim injunction is considered and refused at this stage.

In view of above discussion this court is of the view that whether the suit is maintainable in its present form either in fact or in law – this point should be decided first after appearing of defendant.

Issue notice upon the defendants asking them to show cause within 20 days from the date of receipt of this notice.

Requisite at once.

To date