

P.S. 843 of 2022
CNR No. WBMD06-001185-2022

Order No. 02 / Dated:- 23.12.2022.

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. 1-11 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 Samjan Sk. had 16 anna share in suit plot nos. 249 & 384. He transferred 69- ½ dec of suit plot nos. 249 & 384 to Harez Sk. by registered Sale Deed dated 05.01.1978. Samjan Sk. also had 8 share in suit plot nos. 73, 139, 246, 255 and his name was recorded in RSROR. Samjan Mondal died leaving behind four sons i.e. Syad Ali, Fakir Md., Arsed Ali & Riyajuddin Mondal and one daughter i.e. Sadhu Bibi as his legal heirs and successors. Md. Sk. had 33 dec, Mobarak Mondal had 33 dec, Atiman Bewa had 16.375 dec, Hatiman Bibi had 16.375 dec, Sandesh Bibi had 16.375 dec and Mafejan Bewa had 16.375 dec in suit plot nos. 73, 139, 246 & 255. Their names are recorded in RSROR. Mofejan Bewa died leaving behind two sons i.e. Md. Mondal, Mobarak Mondal and three daughters i.e. Atiman Bewa, Hatiman Bibi and Sandes Bibi as his legal heirs and successors. Md. Mondal died leaving behind one son i.e. Harez Sk. and one daughter i.e. Jamla Bibi as his legal heirs and successors. Harez Sk. died leaving behind six sons i.e. the Plaintiffs, Yeasin Ali, Yeakub Ali, Ajul Sk., Tota Sk. and five daughters i.e. Nariya Khatun, Jundo Bibi, Erina Bibi, Beluriya Bibi, Moina Bibi as his legal heirs and successors. The suit property is an ejmali property and the parties are co-sharers. Now the Defendant Nos. 1-11 are trying to raise new construction over the suit property exceeding their share. When the Plaintiffs asked for amicable partition of the suit property, the Defendant Nos. 1-11 refused. If the Defendant Nos. 1-11 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. 1-11.

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. 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 Defendant Nos. 1-11 are directed to maintain status quo in respect of the nature, character and possession over the suit property till 29.06.2023.

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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