

Order no.:25; Dated:20/02/2018:

Today is fixed for delivery of order with respect to the petition preferred by the plaintiff-petitioners seeking temporary injunction against O.P. nos. 1-3. The O.Ps have filed their written objection to the said application.

The case of the plaintiff-petitioners in brief is that they happen to be the owners and possessors of the suit property corresponding to R.S. and L.R. dag no. 219 falling under Khodarampur Mouza of Raghunathganj P.S.. The original owners of the suit property prior to R.S. settlement were Buniyad Sk, Godhan Mondal, Rashid Sk, Dost Mohammed Sk, Nafijunnesa Bibi and Kuddus Sk who entered into an amicable partition by virtue of which Kuddus Sk was offered the property under dag no. 219 following which R.S. ROR favouring his ~~such~~ ^{such} stake was finally published. Subsequently, out of 13 decimals of suit property 1 decimal towards southern flank was acquired by the Government of India for construction of efflux embankment and Kuddus Sk was left behind with 12 decimals of property which was inherited by his wife, five daughters and two sons. Subsequently, his five daughters and wife gifted their entire share favouring the plaintiff-petitioners by executing two hebanama bearing nos. 2062/17 and 2063/17. The efflux embankment is situated towards the southern side of the suit property and there is a footpath by the side of the metal road thereon and there is a vacant space in between the footpath and the suit dag which was bounded by the plaintiff-petitioners with bamboo fencing, but the O.P.s have dismantled the same and attempted to undertake construction thereon. By their ~~such~~ ^{such} act, the O.Ps have tried to block the ~~ingrace~~ ^{ingress} and ~~egrace~~ ^{egress} of the plaintiff-petitioners from the suit plot. Thus, the

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plaintiff-petitioners have prayed for an order of temporary injunction thereby restraining the O.P. nos. 1-3 from interfering with their peaceful possession of the suit property by undertaking any construction which can change the nature and character of the suit property. In support of their such contention they have preferred the photocopies of R.S. ROR bearing no. 11, L.R. khatian no. 106 as well as photocopies of deeds of hebanam bearing nos. 2062/17 and 2063/17. They have also preferred the case law as reported in AIR 1987 Mad 183 for perusal of this Court.

The O.P.s by preferring a written objection have assailed the maintainability of the application preferred by the plaintiff-petitioners seeking temporary injunction on multiple counts of lack of locus standi, lack of cause of action, defect of parties as well as of the schedule of the property being described vague, indefinite and insufficient of being identified. It is their contention that the plaintiff-petitioners have covertly instituted the instant suit by not impleading all concerned as parties with an oblique motive of harassing them. It is their contention that the suit property happens to be cultivable land and O.P. no. 3 has been irrigating nearby lands with the help of one shallow pump installed at the south-western corner of the suit property. The vacant land which the plaintiff-petitioners have banked upon for getting an order of temporary injunction is a Government land where good number of fruit bearing and other trees have been existing since long and these are looked after by the O.P.s which ensures proper afforestation in the area. It is essential for maintaining ecological balance ^{and} also caters to the daily needs of the local dwellers. They have contended that the pathway which has been described by the plaintiff-petitioners to constitute their mode of ^{ingress} ingress and ^{egress} egress is not accurately described and for accessing the metal road from suit dag no., 219 one has to traverse through the western flank of the said dag and have to approach the said road. They have alleged that the plaintiff-petitioners with an objective of accomplishing wrongful gain and with an ulterior motive of grabbing Government land have initiated the instant proceeding which merits to be dismissed. In support of their contention they have preferred the case laws as reported in AIR 1988 Allahabad 191 and AIR 1999 Rajasthan 361 for perusal by the Court.

Upon consideration of the pleadings of both sides as well as the documents relied upon by them it is found that the plaintiff-petitioners have

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been able to establish a prima facie case as they do possess right, title, interest and possession over the suit property. The O.P.s do not seem to have any dominion over the suit property. It also appears that the right to ^{ingress} ~~ingress~~ and ^{egress} ~~egress~~ enjoyed by the plaintiff-petitioners is being curtailed by the O.P.s. And the plaintiff-petitioners are legally empowered to obtain a relief against the same ^{and more so,} Relying upon the case law as supplied by the plaintiff-petitioners as reported in AIR 1987 MAD 183 wherein the Hon'ble Madras High Court has been pleased to hold that owners of houses of premises abutting a road-way are entitled to have access to that road-way from all points on the boundary of their land and if any obstruction is caused over the road margin securing such access, the person entitled to have such access can certainly enforce that right. It appears that the plaintiff-petitioners' access to Farakka Barrage Project Road is being compromised ^{with} by the alleged overt act of the O.P.s. As the law takes care of the need of residents whose houses are abutted to a highway or a road, hence, I feel that the plaintiff-petitioners would be suffering irreparable loss if they are prevented from ^{accessing} ~~causing~~ the F.B.P. Road from the suit property.

Considering this, ***I feel that the prayer for temporary injunction merits to be allowed and it stands allowed on contest.***

Hence, it is,

ORDERED

that the O.P.s are hereby restrained from changing the nature and character of the suit property or creating any obstruction to the ^{ingress} ~~ingress~~ and ^{egress} ~~egress~~ of the plaintiff-petitioners from the suit property till the final disposal of the instant suit.

D/c by me.

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Civil Judge (Jr. Divn.), 1st Court,
Jangipur, Murshidabad.

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Jangipur, Murshidabad.