

The Court of the Civil Judge (Jr. Divn.), Bidhannagar, North 24 Parganas.

Present: Dhrubajyoti Bhattacharyya,
Civil Judge (Junior Division),
Bidhannagar, North 24 Parganas
Title Suit No. 153 of 2021.
CIS No.153 of 2021.

Order, Bidhannagar, dated the 15th September, 2023.

This date is fixed for showing of cause by the defendant no.1 as to why the case shall not proceed ex parte against him, service report of the summons issued upon defendant no. 2 and 3 and delivery of order on application U/o-I Rule 10(2) of CPC. Plaintiff has filed memorandum of attendance. An application has been filed for extension of the ad interim order of injunction delivered by this Court.

On perusal of the W.S this Court finds that an ad interim order of status quo had been delivered by this Court on 15.06.21. This Court has heard Ld. Counsel for plaintiff. This Court does not find any necessity to vary or discharge the said order. This Court is yet to receive the service report issued upon defendant no. 2 and 3. Accordingly the prayer for extension of operation of ad interim order of status quo with respect to the nature, character and possession of the suit property, be and the same is granted. The operation of the order is extended till date.

Defendant no.1 is absent without any step and is found to be absent despite repeated calls. It is 12.07 p.m now. The case is posted for *ex parte* hearing against defendant no.1. The application U/o-I rule 10(2) of CPC is taken up for consideration and delivery or order. The crux of the said application is that defendant no.1 is not a necessary party in the case and his name is required to be struck out from the case record. This Court has heard Ld. Counsel for the applicant-plaintiff. On perusal of the plaint this Court finds that in para-7 of the plaint mentions that defendant no. 1 and 2 had connived to defraud the plaintiff and had executed another general power of attorney on 27.04.21 intending to frustrate the previous agreement. In para-10 of the said plaint it has also been mentioned that the defendants together are making preparation for alienating the suit property and create third party interest thereon. On the basis of said asseverations and allegations plaintiff has prayed for a consequential decree of injunction against the defendant no.1 and 2. In view of such factual matrix of the suit, it cannot be said that this suit can be determined without keeping defendant no.2 a party to the suit or without giving him an opportunity of being heard on the material facts alleged against him. In the circumstances, this Court is of the opinion that the defendant no.2 is a necessary party to this case and proceeding with the suit by unsuiting the said defendant

would lead non joinder of necessary parties. The application filed by the plaintiff does not have any factual merit.

Hence, it is

ORDERED

that the application filed by the plaintiff U/o-I Rule 10(2) of CPC, be and the same is dismissed without any order as to cost.

Fix 19-10-2023 for S.R of summons upon defendant no.2 and 3. Plaintiff is hereby directed to file necessary requisites for service of summons both by Court as well as by registered post with A/D. Update CIS accordingly.

Civil Judge (Jr. Divn.)
Bidhannagar