

CIS Registration No. T.S. 473/2022
CNR:WBSP09-000752-2022
JO Code: WB01315

Order no. 2, Dated –03.11.2022

The record is put up by petition.

Plaintiff moves a petition under Order 39 Rule 1 & 2 of C.P.C read with section 151 of C.P.C.

Sheristadar's report reveals that no caveat is pending.

Issue notice upon the defendant directing her to show cause within 30 days of the receipt of notice as to why the plaintiff's prayer for temporary injunction shall not be granted against her.

The petition is now taken up for hearing.

The case of the plaintiff in brief is that Avatibela Ghoshal was absolute owner of Bastu land measuring 2Cottah along with three storied building lying at premises no. 2, Kashinath Dutta Road, Cossipore. She had purchased the said property from Manomohan Bhattacharjee by way of a registered Deed of Sale being no. 4530/1960. She passed away on 09.05.2008 and her husband passed away 01.08.2016 leaving behind two daughters i.e. the plaintiff and the defendant and they jointly inherited the said property. Thereafter, they executed a Deed of Partition being no. 9353/2016 by virtue of which the plaintiff acquired 450 sq.ft. on the ground floor, 233 sq.ft. on the mezzanine floor and 1060 sq.ft. on the first floor of the said premises. The defendant acquired 610 sq.ft. on the ground floor and 1060 sq.ft. on the third floor of the said premises. The remaining area was kept as undivided common property. It was also mentioned in the Deed of Partition that if either of the parties was willing sell her share, she would first inform the other party in writing who will have priority to purchase the same. However, on 28.10.2022, the plaintiff found that the defendant is trying to sell her portion to third parties without informing the plaintiff. So, the plaintiff has prayed for order of ad-interim injunction restraining the defendant from transferring the suit property to third party without first giving opportunity to the plaintiff to purchase the same.

The plaintiff has filed photocopies of the following documents in support of her contentions:- Deed of Sale being n0. 4530/1960, Deed of Partition being no. 9353/2016, Aadhar Card, KMC Tax bill, CESC bills, Death Certificates etc.

Heard. Considered.

Perused the petition and materials on record. On perusal, it is seen prima facie from the original documents filed by the plaintiff that the plaintiff and the defendant are prima facie owners of their respective partitioned portions in the suit building and they also have joint ownership over the common areas of the suit building. Recitals of the Deed of Partition prima facie reveals that it was agreed between the plaintiff and the defendant that if either of the parties was willing sell her share, she would first inform the other party who will have priority to purchase the same. As such, the plaintiff has been able to establish a strong and arguable prima facie case in her favour and the balance of convenience and inconvenience lies in favour of grant of order of injunction.

Whether the plaintiff is entitled to get decree as prayed for is a matter of trial.

Hence, it is

ORDERED

that the defendant is directed not to create third party interest over the suit property till next date. Accordingly ad interim injunction petition (IA 01/2022) is disposed of.

The plaintiff is directed to comply with the provisions of Order XXXIX Rule 3 (a) and 3 (b) of Civil Procedure Code, at once.

D/C by me:

Civil Judge (Jr. Div.), Addl. Court,
Sealdah, South 24 Pgns.

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Later, Dated 03.11.2022:

Plaintiff files a petition praying for return of original documents.

Prayer is considered and allowed on condition that the plaintiff is to re-file the said documents as and when called for.

To date (01.12.2022).

Civil Judge (Jr. Div.), Addl. Court, Sealdah