

T.S 31 of 15 (R. 173 of 2015)
CNRWBSP07-002070-2015
J.O Code No.-WB01088

Order dtd. 17/12/2024.

Today is fixed for payment of cost by the defendant, hearing of petition filed by the plaintiff under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. W/O, if any in the meantime and hearing of petition filed by the petitioners namely Raju Singh and Vicky Shaw, W/O, if any, in the meantime.

Plaintiff is present by filing hazira.

Defendant is present by filing hazira.

The Learned Advocate on behalf of petitioners Raju Singh and Vicky Shaw is present by filing hazira.

One receipt has been filed by the Ld. Advocate on behalf of the defendant showing payment of cost of Rs.300/-. Let the receipt be kept with the case record. The Ld. Advocate on behalf of the defendant filed W.O against the prayer of the plaintiff under Order 39 Rule 1 and 2 read with sec.151 of CPC.

The Ld. Advocate on behalf of the plaintiff filed objection against the application filed u/o 1 rule 10(2) of CPC.

Both the applications are taken up together as they are interlinked.

Heard the respective submissions of the Ld. Advocate at length. Perused the available materials on record. Considered.

The Ld. Advocate on behalf of the plaintiff petitioner moved his application u/o 39 Rule 1 and 2 read with sec.151 of CPC submitting inter alia that the plaintiff filed this suit against the defendant praying for partition and in the present case he has filed a petition for survey commission which was allowed and thereafter the plaintiff came to know that the defendant is attempting to sell/transfer her share in the suit properties particularly the property situated in 28A, 28B and 28H, Pottery Road, Kol- 700 015 under P.S Entally to one outsider namely, Raju Singh before completion of the commission work. The Ld. Advocate on behalf of the plaintiff further submitted before the court that the plaintiff already raised his objection and sent a letter to the defendant asking her not to transfer the same but the defendant did not pay any heed. The Ld. Advocate on behalf of the plaintiff further contended before the Court that if the defendant transfers or dispose of physical possession of the properties to outsider the plaintiff will suffer irreparable loss and injury. Thus, Ld. Advocate on behalf of the plaintiff prayed for an order of injunction asking the defendant not to transfer, deal with or partly possession of the

defendant in immovable property situated at 28A and 28B and 28H, Pottery Road, Kol-700 015 along with other suitable directions.

After filing of the petition filed by the plaintiff u/o 39 rule 1 and 2 read with sec.151 of CPC the Ld. Advocate on behalf of the petitioner Raju Singh and Vicky Shaw filed an application u/o 1 rule 10(2) of CPC praying for addition of party in the present suit submitting inter alia that the plaintiff filed this suit for partition against the defendant being his sister in respect of different properties mentioned in the plaint and during continuation of the present suit the plaintiff admitted the share of the party and accordingly preliminary declaring $\frac{1}{2}$ share of plaintiff and defendant each in the undivided suit property and thereafter in terms of preliminary decree the plaintiff sought for partition commission and accordingly Sri Biswajit Das filed commissioner's report and plaintiff raised objection with a prayer for further investigation and accordingly Debjani Roychowdhury (Mukherjee) was appointed as Ld. Commissioner. Thereafter, according to the said petitioners the plaintiff approached the defendant for developing the premises at 28A, 28B and 28H, Pottery Road and the petitioner contacted with the defendant for developing such property as he is in possession of this property and after prolonged discussion with the plaintiff and defendant it was resolved the plaintiff and defendant will get 50% allocation of the proposed multi storied building to be erected upon the property including 50% car parking space on the ground floor and also refundable sum of Rs.10 lacs only (each land owner will get Rs.5 lacs) at the time of execution of the development agreement. According to the petitioner both the parties agreed to the same and development agreement was prepared and the defendant Balaka Das executed the same by putting her signature on receiving Rs.5 lacs through online payment but the plaintiff refused to execute the same and also refused to accept Rs.5 lacs in oblique motive under fictitious plea and filed the application for injunction in the present suit. Thus, the petitioners have prayed for adding them as party to the suit claiming that the development agreement has created interest over the entire property mentioned in part- I of Schedule A property in favour of the petitioners.

The Ld. Advocate on behalf of the plaintiff by filing written objection against the application u/o 1 rule 10(2) of CPC inter alia contended that the petition filed by the petitioner is not at all maintainable as it will appear from the allegation made in the application u/o 1 rule 10(2) of CPC that the petitioners have no concerned with the subject property nor with the co-owners of the subject properties namely the plaintiff and the defendant and admittedly there is no agreement for development between the plaintiff and the petitioners and the plaintiff

have never accepted money from the petitioner. Thus, the Ld. Advocate on behalf of the plaintiff prayed for rejecting the prayer of the petitioners.

The Ld. Advocate on behalf of the defendant by filing W.O against the application filed by the plaintiff u/o 39 rule 1 and 2 read with sec.151 of CPC inter alia contends that the present petition for temporary injunction is not maintainable as the similar petition under the provision of order 39 Rule 1 and 2 of CPC had already been filed by the plaintiff and the same has been disposed of earlier. The Ld. Advocate on behalf of the defendant further submitting before the court that in the present case when Ld. Commissioner Debjani Mukherjee went to the spot for commission work on that date and time the plaintiff expressed his view about the development of the property and according to the suggestion of the plaintiff negotiation and conversation were made with the developer Raju Sho who prepared the development agreement and thereafter Raju Singh tendered the said agreement to the defendant for her approval and on perusal and scrutiny of the said agreement the defendant put her signature upon the development agreement by receiving a cheque of Rs.5 lacs on 24.11.2024, thereafter the said development agreement was tendered to the plaintiff for its execution but the plaintiff refused to put his signature on the plea that he would not receive the amount of Rs.5 lacs instead of Rs.10 lacs due to non execution of development agreement by the plaintiff it was not possible to develop the entire property and thereby the nature and character of the property cannot be changed. Thus, the Ld. Advocate on behalf of the defendant prayed for rejecting the present injunction petition.

The Ld. Advocate on behalf of the plaintiff in support of his contention relied on the following decision :-

- i) *Jharna Rath Vs. Rabindranath Bar and Others reported in 2024 (2) Indian Civil Cases 472 (Cal);***
- ii) *Mandira Sen Vs. Ilona Sen reported in 2021(2) Indian Civil Cases 363 (Cal);***
- iii) *Narayan Chandra Garai and Others Vs. Matri Bhandar Pvt. Ltd. and another reported in AIR 1974 Calcutta 358;***
- iv) *Jayantilal N. Shah Vs. Nagarathna Murthy reported in 2015 (1) ICC 653.***

It is matter of record that the present suit has been filed by the plaintiff praying for partition against the defendant. It is also matter of record that in the present case the prayer of the plaintiff for temporary injunction was allowed vide Order No. 8 dated 27.11.2013 in part on contest with the direction that there be an order of status quo in respect of the nature, possession and character of the suit property (Part 1 of Schedule A) till disposal of the suit. Part 1 of Schedule A

contains inter alia the property in respect of which in the present case injunction was sought. Now it is matter of record that preliminary decree in the present case has been passed vide Order dated 27.07.2016 on admission declaring that the plaintiff and the defendant each got 50% undivided share in the suit property. Thereafter, on the basis of application of plaintiff Sri Biswajit Das was appointed as Survey Commissioner and thereafter, Ld. Advocate Debjani Roy Chowdhury was appointed as Partition Commissioner by Order dated 12/10/2023. Since then commissioner report has not been submitted by the said Ld. Commissioner. From the contention of the application made by the plaintiff it appears that the plaintiff filed the second application for temporary injunction as the plaintiff apprehends that the defendant may part with the possession and/or interest of the suit property. The apprehension of the plaintiff finds support from the document filed by the petitioners that is the alleged development agreement purportedly executed by the defendant and the petitioners. Thus although in view of the decision of the Hon'ble Apex Court in **Kattukandi Edathil Krishnan Vs. Kattukandi Edathil Valsan 2022 Live Law (SC) 549** although the final decree is continuation of the preliminary decree proceeding and the temporary injunction order granted on 27.11.2013 is still in force, in my considered opinion order of temporary injunction is capable of being altered or varied on prima facie proof of new situation that may have emerged subsequently. Their Lordships of the Supreme Court in **Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993** indicated that second application for temporary injunction could be filed. It was observed as under:--

"Interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the Court usually take. They did not in that sense, decide in any manner the merits of the controversy to issue in the suit and do not course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not infringe upon the legal rights of parties to the litigation the principle of res judicata does not apply to the findings on which these orders are based, though if applications were made, for relief on the same basis after the same has once been disposed of, the Court would be justified in rejecting the same as an abuse of the process of Court."

Thus, perusing the document filed by the plaintiff finding the strong prima facie case, the balance of convenience and in convenience in favour of

the plaintiff I am of the opinion that if the temporary injunction is not granted in favour of the plaintiff, the plaintiff will suffer irreparable loss and injury.

Hence, it is,

ORDERED

that both the parties are directed to maintain status quo as regard to the possession and nature and character of the suit property as mentioned in the application till disposal of the suit in final form.

Both the parties are directed to not to create any third party interest or not to transfer or deal with /part with possession of the property situated at 28A, 28B,28H Pottery Road, Kolkata 700015 till disposal of the suit in final form.

The application filed by the plaintiff under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. is accordingly disposed of.

Now as regard to the prayer of the petitioners for impleading them as parties to the suit I am of the opinion that the object of Order 1 Rule 10(2) of CPC is to bring on record all the persons who are parties to the dispute relating to the subject matter and whose presence is necessary for determination of the dispute without any protraction or inconvenience and to avoid multiplicity of the proceeding.

In *State of Assam v. Union of India reported in 2010 (10) SCC* it was observed that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the questions involved in the proceedings.

In the present case admittedly the plaintiff is not a signatory of the development agreement on the basis of which the petitioners intending to be add as a party to the suit. In the present case the petitioners are neither necessary party nor proper parties whose presence are required for effective adjudication of the suit. The presence of plaintiff and defendant is the only requirement at the present stage for effective adjudication of the case in final form.

Thus, I do not find any merit in the application filed by the petitioners under Order 1 Rule 10(2) of C.P.C. and accordingly the same stands rejected.

To 05.02.2025 for Commissioners report.

D/C by me,

Sd/-

Civil Judge (Sr. Divn.)
Small Causes Court, Sealdah

Sd/-

Civil Judge (Sr. Divn.),
Small Causes Court, Sealdah