

Present: Sri Srikumar Goswami (JO Code WB00714)

Judge, Commercial Court at Alipore.

Title Suit 20/2021

(CNR no. WBSP18-000077-2021)

Order no. 01

03.09.2021

In the matter of :

Suit for declaration, recovery of possession with claim of money and damages with permanent injunction valued at Rs.4,00,10,000/-.

And

In the matter of :

Sri Ashis Bhuniya & anr.

Vs.

In the matter of :

Sri Bishnupada Mandal & 23 ors.

Appearance for the Plaintiff/Petitioner:

Mr. Amitabha Basu ... Ld. Counsel.

ORDERED

Plaintiffs file a suit for declaration, recovery of possession with claim of money and damages with permanent injunction valued at Rs.4,00,10,000/-, alongwith Vokatnama and Court Fee of Rs.50,000/-, which is paid correct.

Requisites put in alongwith Process Fees.

Let the application be tentatively registered as Title Suit.

Note in the register.

Issue summons accordingly.

The Plaintiffs are also directed to issue notice relating to the instant suit alongwith the plaint, all annexures and all relevant documents at once preferably through Email or Whatsapp or any other mode as prescribed by the Hon'ble Supreme Court of India and is further directed to file affidavit of service witin 24 hours.

Postal receipts at once.

Plaintiffs also file an application for granting of leave under Section 12A of the Commercial Courts Act, 2015, on the prayers stated therein. Let the same be registered as **I.A. no. 02/2021.**


I.A. no. 02/2021

1. The Ld. Counsel Mr. Amitabha Basu appearing on behalf of the Plaintiffs/Petitioners, moves the present application for granting of leave under Section 12A of the Commercial Courts Act, as amended from time to time on the ground that some urgent relief is sought for in order to protect the interest of the Plaintiff/Petitioner.
2. Heard.
3. It appears that the suit contemplates an urgent relief by filing necessary application under Order XXXIX Rules 1 & 2 read with Section 151 CPC and accordingly, the leave as sought for is granted.
4. Accordingly, the instant I.A. is disposed of.

I.A. No. 01/2021

1. At this stage, the Ld. Counsel of the Plaintiffs/Petitioners, Mr. Amitabha Basu files an application under Order XXXIX Rules 1 & 2 read with Section 151 CPC in terms of prayers of the said application. Let the same be registered as **I.A. No. 01/2021.**
2. The Ld. Counsel of the Petitioner, Mr. Basu at this stage, moves the instant application praying for ad-interim order in terms of the prayers of the instant application.

3. Office noted that there is no caveat against any party in the instant case.
4. Issue notice returnable by **08.09.2021.**
5. Affidavit of service within 24 hours.
6. The Petitioners are also directed to issue notice relating to the instant injunction application alongwith all annexures and all relevant documents at once through Email or Whatsapp.
7. I have heard the Ld. Counsel Mr. Basu as well as perused all relevant documents as annexed with the plaint as well as with the instant application.
8. Perused and considered the present application.
9. From the submission of the Ld. Counsel for the Petitioners, Mr. Basu, it appears that:
 - i. The the present dispute arose from the inability of the Defendant/Respondent no. 24 who allegedly defaulted in payment of Rs.8,50,000/-. The Plaintiffs/Petitioners got the leasehold rights in respect of the suit properties.
 - ii. The Petitioners formed a partnership business under the name and style of M/s Dream Bricks Industries comprising of the Plaintiff/Petitioner no. 1 and his elder brother, Plaintiff/Petitioner no. 2 herein as partners in the said partnership firm.
 - iii. There was a stipulation in the lease deed that the Plaintiff/Petitioner no. 1 being the lessee shall have no right



Judge
Commercial Court at Alipore

to sell those leasehold properties to any person other than the lessors, who are incidentally the Defendants/Respondents no. 1 to 23. But the Plaintiff/Petitioner no. 1 as a lessee has the right to grant permission to anybody to run the said brick field business from the said property subject to convenient terms.

iv. The Defendant no. 24 was in possession of the land beneath the structure purely as permissive occupant and licensee while the ownership of the structure, chimney etc. of the said partnership business were constructed by the Plaintiffs/Petitioners out of the fund of the said partnership business. Defendant/Respondent no. 24 was permitted to use and occupy the same till he pays the entire consideration, for buying and/or purchasing the said structure of the said business in question.

v. It is further alleged that the Defendant/Respondent no. 24 have not acquired any right in respect of the land beneath the structure of the said business in question.

10. On perusal of the above submissions, it appears in point no. 2(r) at Page no. 30 of the present application that the Plaintiff/Petitioner no. 1 deemed to have been in possession of the suit property after the expiry of the period mentioned in the original lease granted in his favour by the Defendants/Respondents no. 1 to 23 which according to the Plaintiffs/Petitioners, has not yet been disputed or denied by the Defendants/Respondents no. 1 to 23. There is also allegation that the Defendant/Respondent no. 24 has been unlawfully and illegally possessing the said property.


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11. However, from the above submissions, I do not find any urgency in this matter as from the documents annexed with the present application as well as the plaint, this Court is not in a position to ascertain that the Defendant/Respondent no. 24 has taken any effective steps for dealing with the scheduled property.

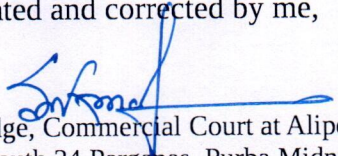
12. Hence, the prayer for granting ad-interim order of injunction as per the present application is hereby considered and refused at this stage. However, the Defendant/Respondent no. 24 is hereby restrained from dealing with the property in question without the consent of this Court till the next date fixed.

13. Both sides have the liberty to make necessary application for modification of this order in case of emergency after service of notice upon the other side.

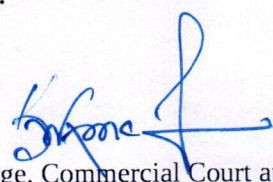
14. Issue notice accordingly to show cause as to why the instant application shall not be allowed alongwith plaint, injunction application and all annexures within 24 hours and the Plaintiffs/Petitioners are also directed to file the affidavit of service within 24 hours.

15. To **08.09.2021 at 1 p.m.** for S/R, appearance, filing affidavit-in-opposition, if any, and also for hearing.

Dictated and corrected by me,


Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Judge
Commercial Court at Alipore


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For South 24 Parganas, Purba Midnapore,
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