

T.S. 17/2022 (R-129 of 17)
(Old T.S.44 of 2015)

Order No. 48

Dated : 30.07.2022

Record is put up today as per the prayer of defendant no.1 for hearing of application under order 39 rule 1 and 2 with an ad interim prayer.

Copy of petition is served upon the plaintiff.

Accordingly record is taken up for hearing in presence of both the parties.

Heard Ld. Advocate for the defendant no.1. Defendant no.1's case in a nutshell is that the plaintiff has filed the present suit for declaration of his 3/5th share in all the suit plots which include plot no.345/834 where plaintiff has claimed 7 decimal out of total 14 decimal. Defendant no.1 to 5 are co-sharers with the plaintiff in said plot. Defendant no.1 claims that both the plaintiff and the defendant got 50% share in the aforesaid plot by way of a deed of gift executed by the daughters of Paresh Parya. Plaintiff and defendant no.1 are full blooded brothers and they have inherited properties from their father Paresh Parya.

Defendant no.1 contends that the plaintiff is trying to raise construction of a house on the portion of land possessed by the defendant no.1 in aforesaid plot and he is also trying to raise a boundary wall in said plot. He alleges that the plaintiff has also raised plinth of 3/5th height in the said plot.

Accordingly, to protect his right on the said plot defendant has prayed for ad interim injunction against the plaintiff so that the plaintiff be restrained from changing the nature and character of the suit plot no.345/834 and from making any further construction.

Perused the materials on record as well as the documents filed by the defendant no.1 today i.e. original deed of gift being no.4076/2008, L.R.R.O.R in the name of defendant no.1, L.R.R.O.R in the name of son of defendant no.1 and one plot information slip.

On perusal of the record I find that the defendant no.1 and his son has prima facie possession of 50% share in aforesaid plot and accordingly, defendant no.1 has a similar prima facie right over the suit plot.

Now so far as allegation levelled against the plaintiff is concerned I find that since both the parties i.e. the plaintiff and defendant no.1 stand in the same capacity in the suit plot prima facie, it will be appropriate that the said plaintiff maintains his status quo over the said plot.

Considering all the above facts prima facie it appears that the defendant no.1 is one of the co-sharer and his portion of property has not yet been demarcated. Therefore, in the above facts and circumstances this court is of the view that the balance of convenience and inconvenience lies in favour of the defendant no.1.

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Hence it is

ordered

that the prayer for ad interim injunction be and the same is **allowed** at this stage. The plaintiff is directed to maintain status quo over the schedule plot till **18.08.2022**.

Plaintiff is directed to file a written objection to the aforesaid petition so that the petition may be finally disposed of.

To **18/08/2022** for hearing of injunction application and filing W/O by the plaintiff in the mean time.

T/c by me

Sd/- Riha Trivedi
Civil Judge (Jr. Divn.)
Additional Court, Garhbeta,
Paschim Medinipur
J.O.Code -W.B -01318

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