

In The Court of Sub-Judge, Kahalgaon (Bhagalpur)

Presiding officer :- Amit Kumar Sharma

Title Suit No:- 470 /2013

Shiv Pujan Mahato & Others. Vs Ramdahin Mahato & Others

Dated: 16.09.2022

Order

Attendances have been filed on behalf of the parties. This case is fixed for order on injunction petition dated 18-08-2018 and its rejoinder dated 15-11-2018. The injunction petition has been filed on behalf of defendant no. 2 Most. Phool Kumari Devi and rejoinder have been filed on behalf of plaintiff. Both the parties have been heard on the petition and rejoinder in detail.

The case of defendant/petitioner is that the defendant no. 1 executed a registered gift deed dated 20.05.2004 in favor of defendant no. 2 (Widow daughter in law of defendant no.1). With object that the defendant may get her maintenance out of the gifted property. The gift was accepted by the donee and the land was mutated in the name of defendant no. 2 but plaintiffs, with the help of some goons, have started cutting the mango trees planted over the land in question on 12.08.2018, that incident has necessitated filing of this injunction petition. It is prayed that the plaintiff may be restrained from changing the nature of suit land and from interfering in the peaceful possession of defendant no. 2.

In the rejoinder plaintiffs have denied all the allegations and stated that defendant no. 1 had no right to execute any gift deed in favor of defendant no. 2 because in an amicable oral family partition amongst plaintiff no. 1 and defendant no. 1 and their five other brothers the suit property fell in the share of other brothers but no share was granted to the defendant no.1 in the mauza Mazrohi instead of it he was given property in other Mauza. Therefore, defendant no. 1 had no right to execute this alleged gift deed and to set aside that gift deed this suit has been filed.

Prima Facie Case :- For the purpose of getting relief in injunction petition the defendant/petitioner is required to make out her prima facie case. In

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respect of it the admitted fact is that defendant no. 1 and his brother plaintiff no. 1 are total seven brothers . It is the case of plaintiff that the suit land has not been allotted to defendant no. 1 in the amicable oral family partition but plaintiff has not made his other five brothers party in this suit. Plaintiff has not even disclosed all details of alleged oral partition so as to specify the shares of each share holder . whereas that alleged oral partition is the basis of suit for plaintiff . On the other hand there is no dispute that defendant no.1 was a share holder of the suit land and he has himself denied the alleged oral amicable family partition , thus amicability of that oral partition is already in question , further he has executed a registered gift deed on the basis of which defendant no. 2 has got his mutation . There is also a presumption of law in favour of the registered instrument . Plaintiff is challenging the gift deed of 20.05.2004 in present suit after a period 11 years on the basis of some oral family partition of which no details have been furnished nor other brothers have been made party. Therefore this court finds that the petitioner/ defendant has prima facie case in her favour.

Balance of Convenience :- Plaintiff have not even disclosed the essential facts regarding alleged oral family partition whereas defendant is a widow for whose maintenance the alleged property has been gifted in 2004 and presently the defendant no.1 has already been died , therefore this court finds that the balance of convenience lies in favour of defendant no. 2.

Irreparable Loss :- So far as this point is concerned, the defendant has not only the gift deed in her favour but the suit property has also been mutated in her name. There is a report of pleader commissioner Ram Kumar according to which the suit property has some structure allegedly belongs to the plaintiffs but the pleader commissioner has also reported that the alleged suit land in the shape of garden on which trees of Mangoes, Guava, Tar, Shemal, have been planted and one Mango tree stem has been cut above 4-5 feet from the ground . In this regard this court finds that the petitioner will suffer irreparable loss if injunction is not granted in her favour.

After considering all these facts and circumstances this court finds that

It would be in the interest of justice to direct both the parties to maintain status-quo on the suit land no party will further transfer the suit property to any other person. Neither any party would change the nature of the suit land.

A copy of this order be sent along with copy of plaint to the Sub-Registrar Kahalgaon with direction to ensure compliance of this order. Defendant petitioner is directed to file copy of plaint for this purpose.

The case is fixed on 08.12.2022 for plaintiff's evidence.



(Amit Kumar Sharma)

Sub-Judge , Kahalgaon