

District: Bhojpur

In The Court of Sub-Judge I, Piro

Title Suit no. - 122/2019

Murat Sah

..... Plaintiff

Versus

Suresh Sah and Other

.....Defendant

Order

27-09-2023: There is attendance of the plaintiff and defendant through their Ld. Counsel.

On call Ld. Counsel for the plaintiff appeared and moved his petition dated 18-11-2019 filed under Order 39 Rule 1 and 2 of the C.P.C. Ld. Counsel for the plaintiff submit that the plaintiff has filled the suit for declartion of gift deed no. 12 dt. 02-01-2019 faurged, fabricated, illegal and void. Plaintiff and defedant no 1 and 3 all have 1/3 share in schedule “K” property. Oral partition have taken place and this oral partition all three are in possession of their allotted share. Defendant no. 3 Dukhad Sah has executed gift deed no. 4990 dt. 29/12/2018 in favour of his four daughters. In this gift deed the name of plaintiff Murat Sah is shown on the south side of the gifted property. Which proves the fact of partiton. Defendant no 1 Suresh Sah has illegally executed gift deed in favour of his wife Shanichari Devi (defendant no. 2) in respect of his allotted share including share of the plaintiff. The defendant no. 1 has collected sands, bricks etc for construction. The defendant also wants to change the nature of the property. The plaintiff will suffer irritable loss. Prima-facie case and balance of convenience is in favour the plaintiff. There should be no change in the physical form of the disputed land. So temporary injunction to restrain the defendant is necessary.

Ld. Counsel for the defedant no 1 and 2 opposed the petition and submit that after death of Sikau Sah, his three sons plaintiff, defendant no1 and 3 have orally divided their share. Murath Sah(plaintiff) was allotted plot no 527 and defendant no 3 was allotted 19 dec. in plot no 421 and defendant no 1 was allotted 3 dec. in plot no 421 and 16 dec. in plot no 441 and all three are allotted equal share in plot no 338 area 20 dec. The plaintiff has soon 18 dec. on plot no 527 to yashoda devi defendant no 3 has sold 19 dec. on plot no 521 to Ramashraya Sah. The defendant no 3 has executed gift deed of 16 dec. land of plot no 441 in favour of his wife

Conti...

Shanichari Devi. Prima-facie case and balance of convenience is not in favour the plaintiff. The petition should be rejected.

Heard and perused the record. After perusal of the same this court finds that this suit has been filled the suit for declaration of gift deed no. 12 dt. 02-01-2019 forged, fabricated, illegal and void. Defendant has also admitted that after death of Sikau Sah, his three sons plaintiff, defendant no1 and 3 have orally divided their share. In the gift deed no. 4990 dt. 29/12/2018 the name of plaintiff Murat Sah is shown on the south side of the gifted property. Non-survey Knowing commissioner report also support the facts stated by the plaintiff.

In such circumstances this court finds prima-facie case and balance of convenience in favour of the plaintiff. The plaintiff would have to suffer irreparable loss. The injunction is also necessary in the interest of justice to restrain the multiplicity of the suit and to avoid the multiple petition and unnecessary delay in disposal of the suit. Therefore, petition dt. 18/11/2019 filed under Order 39 Rule 1 and 2 of the C.P.C. is ordered to be allowed.

Put up on...11/10/2023.....for hearing under section 89 C.P.C.

(Aditi Gupta)
Sub Judge I
Civil Court Piro