

**IN THE COURT OF CIVIL JUDGE (S.D),
GOGARI, KHAGARIA
PRESENT PRESIDING OFFICER SH. SUMIT KUMAR SINGH
TITLE SUIT NO. 11 OF 2016
CIS NO. 124 OF 2018**

IN THE MATTER OF:

SHYAM SUNDAR KHETAN (DEAD THR. LRS.) ...PLAINTIFF

VERSUS

SUSHIL PRASAD SAH & ORS. ...DEFENDANTS

(ORDER ON INJUNCTION APPLICATIONS DATED 27.02.2019 FILED BY PLAINTIFF)
&
(INJUNCTION APPLICATION DATED 22.03.2022 FILED BY DEFENDANT NO. 1 AND 2)

**ORDER
14.06.2022**

By a composite order, injunction application dated 27.02.2019 filed by plaintiff and injunction application dated 22.03.2022 filed by defendant no. 1 and 2 shall be disposed of today.

INJUNCTION APPLICATION OF PLAINTIFF:

Present application dated 27.02.2019 has been filed by the plaintiff under Order 39 Rule 1 and 2 CPC seeking *ad-interim* injunction against the defendants praying therein to restrain the defendants from raising further construction over the suit land.

It is the case of plaintiff that the suit land is his ancestral property which was settled by the ex-landlord to his ancestors before Independence of India. After some time the property had devolved upon the original plaintiff and later to his legal representatives. Since then, the plaintiff had remained in possession of the suit land over which father of original plaintiff had raised a house

which was occupied by the plaintiff. The said house was then let out to one Shiv Nandan Sah. Later on, Shiv Nandan Sah had failed to pay the rent hence, father of the original plaintiff had filed an Eviction Suit bearing Suit No. 256/1946 was decreed in his favor. Later on, in a partition suit bearing Partition Suit No. 38 of 1952 the suit land and house was allotted to the share of father of original plaintiff. After that the Government of India had abolished zamindari system and the ex-landlord were directed to file return. In the present case ex-landlord had furnished return for the suit land in the name of father of the original plaintiff. Since then, the suit land and the house remained in the possession of plaintiff. Now in the year 2009 defendant no. 1 and 2 have approached the plaintiff and asked him to let out the suit house to them on rent. To which the plaintiff had agreed and the same was let out to the defendants. After some time defendant no. 1 and 2 have inducted a sub-tenant in the suit house without informing the plaintiff and without obtaining his consent. At the same time defendant no. 1 and 2 have also stopped and failed to pay rent for the suit premises. Hence, the present suit was filed with prayer for declaration of title and for eviction of defendants from the suit land.

Now the present injunction application has been filed by the

plaintiff on the ground that the defendants have started to raise permanent construction over the suit land with the permission of plaintiff. Hence, it was submitted that if the defendants are not restrained then the plaintiff would suffer irreparable loss. Hence, prayer was made to restrain the defendants.

Defendants on the other hand submitted that the suit land was in their possession since the time of their ancestors who have raised the permanent construction over the same. It was also submitted that vide a registered partition deed dated 06.07.1964 the suit land and house was allotted to the share of father of defendant. It was also contended that father of plaintiff was also a party to the said partition deed and had signed the same. Since the date of said partition the suit land and the house had always remained in possession of defendants. As such the plaintiff has got no title and possession over the suit land. Hence, it was contended that the plaintiff has got no *prima-facie* case for grant of injunction.

At the same time defendants have also contended that the plaintiff is not in possession of the suit land and the same was admitted by plaintiff in his plaint. Hence, prayer was made to reject the present application.

Heard ld. Counsel for the parties and perused the record. Perusal of record shows that the plaintiff had raised his claim on the basis

of settlement made to his father by the ex-landlord and continued possession thereafter. It was also claimed that the defendants are his tenant and have got no right in the suit property except as a tenant. On the other hand defendants have pleaded that the suit land was settled to his ancestors and in the family partition held in the year 1964 the suit land and house was allotted to the share of his father. Thus, it was claimed that on the basis of said settlement and partition they have got valid right, title and possession.

It is the plaintiff who is before the Court seeking a decree of declaration of title and recovery of possession. Thus, the onus to prove the facts is on the plaintiff and the defendants are merely required to tilt the balance of probabilities in their favor. Thus, plaintiff is required to produce more cogent and reliable evidence to secure a decree in his favor. Thus, it is clear that primarily this suit requires a detailed trail to establish and determine the right and title of plaintiff. As of now this Court is preliminarily required to adjudicate upon the material produced by the parties to find out whether prima-facie case is made out by the plaintiff. The documents and materials produced by the plaintiff shows that a settlement was made to his ancestor and then the property had remained in his possession. At the same time defendants have also produced equally cogent materials to prove that the property was

settled by the ex-landlord to his ancestor and the same had remained in his possession ever since. Thus, it was expected that the plaintiff would produce more cogent evidence to prove their case for grant of injunction.

At the same time it is also clear that the plaintiff is not in current physical possession of the suit land. Even if defendants raises any construction the same shall be subject to the result of the present suit. If the suit is decreed in favor of plaintiff he would be entitled to a vacant possession of the suit land. As such no loss would be occasioned to the plaintiff if the injunction application is rejected.

Thus, it is clear that plaintiff has got no *prima-facie* case in his favor and he has got no balance convenience. Hence, the present injunction application dated 27.02.2019 filed by the plaintiff is hereby rejected.

APPLICATION OF DEFENDANT

Present application dated 22.03.2022 has been filed by the defendant no. 1 and 2 seeking *ad-interim* injunction against the plaintiff thereby restraining him from alienating the suit land to a third party till disposal of the suit.

It has been pleaded that the suit land was never owned and possessed by the plaintiff or his ancestor. It was also claimed that the defendants have their title and possession over the suit land

since long on the basis of settlement made by ex-landlord and subsequent partition held in the family.

It was claimed that the plaintiff had filed the present suit and the defendants have contested the same after filing of their written-statement. Hence, the plaintiff had foreseen that the suit is not going to be decreed in his favor. Thus, he had started to negotiate with strangers to sale the suit land along with the house and thus, defraud the defendants.

It was claimed that the defendants are residing in the suit house and using a part of it for earning their livelihood. If the plaintiff succeeds to alienate then there are chances that the defendants would suffer undue hardship. Hence, prayer was made to restrain the plaintiff from alienating the suit land till disposal of the suit.

Plaintiff had objected the prayer on the ground that the suit land was never owned by defendants and he has got valid right and title over the same. It was also claimed that the plaintiff had let out the suit premises and the property to the defendant who is his tenant.

Heard ld. Counsel for the parties and perused the record. Perusal of record shows that the present application has been filed on the basis of an apprehension that the plaintiff is likely to sale the suit property with intent to create trouble for the defendants. There is no reasonable ground cited for the said apprehension. It was

alleged that the plaintiff is in contact with some people to sale the suit land. There is no other basis nor there is any instance as to how the defendants have obtained this information. No material was produced by the defendants to prove that the plaintiff had actually committed some act or omission to demonstrate his intent to alienate the suit property to any other party, that too during pendency of the suit. The law in this regard is clear that a purchase made during pendency of the suit shall be subservient to the final adjudication of the suit. Thus, it is expected that the plaintiff would obey the mandate of law and would desist from executing any conveyance deed pertaining to the suit land till disposal of the suit. At the same it is apposite to mention that Id. Counsel for plaintiff had fairly conceded that his client has got no immediate intent or need to sale the suit land in the manner apprehended by the defendants. As such it is clear that there is no immediate danger of sale or alienation by the plaintiff and the apprehension of defendant is uncalled for. Hence, the present injunction application is hereby dismissed. However, plaintiff is directed to abide by the stand taken by his counsel before the Court today.

Matter is pending for evidence of plaintiff since 24.07.2018. However, no evidence has been produced by the plaintiff till date.

Hence, plaintiff is granted 5 more dates to complete his evidence or else appropriate order shall be passed. List the matter on 21.06.2022 for evidence of plaintiff.

Civil Judge (SD)