

**In the Court of Sub Judge I
Madhubani
T.S. 54/2018 & C.I.S. T.S. 37/2018
Ratan Kumar Kheriya v/s Ram Avtar Sarraf & others**

ORDER

29-07-2019 Today date is fixed for order. Attendance has been filed on behalf of both parties through their learned Advocates.

A temporary injunction petition U/O 39 R 1-2 and section 151 C.P.C. has been filed on behalf of plaintiff on 24-02-2018. The copy of this petition has been served to the lawyer for the defendant.

Learned lawyer for the plaintiff has submitted that the plaintiff has filed this suit for declaration of sale-deed dated 19.07.2017 as illegal, ineffective and void and for granting decree for eviction and directing the defendant 1st set to vacate the suit and arrears of rent mentioned in schedule no 3 of the plaint. It is further stated that, the defendant 1st set are the tenant of the plaintiff and due to grab the land mentioned in schedule no 3 of the plaint they received the sale deed through defendant no 3 but defendant no 3 has no right to execute the sale-deed. That, defendant no 3 threatened to execute further sale deed regarding the land mentioned in schedule no 1 of the plaint. That, the plaintiff has got a prima facie case and balance of convenience in his favour and if the plaintiff is not restrained immediately with respect to the suit-land in such situation defendants will sustain irreparable loss, which can be compensated. Under this circumstance plaintiff has prayed to restrain the defendant no 3 from selling the suit property and maintain the status-quo mentioned in schedule no 1 of the plaint till disposal of the suit. Therefore he prays that the petition dated 24.02.2018 be allowed .

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Another petition filed by plaintiff on dated 04.04.2019 with prayer to read as schedule no 2 in place of schedule no 1 in the para no 4 and prayer portion in his injunction petition dated 24.02.2018.

The learned counsel of the defendant no 3 opposed the injunction petition dated 24.02.2018 by filing show cause on dated 20.07.2018. The learned counsel of defendant no 3 submitted that the petition for injunction filed by the plaintiff is not maintainable either in law or on facts and it is fit to be rejected. That, the petition is itself contradictory with the pleading of the plaintiff such as prayer sought for in the injunction petition is quite different than thereof the suit-land as made out in the plaint by the plaintiff and in such circumstance, how an order of injunction can be passed by the court. That, the plaintiff has no prima facie case and balance of convenience irreparable loss in his favour. That, for the ends of justice the order of injunction be vacated instantly otherwise a right-full owner be highly injured and the same can not be compensated in terms of money. Hence prayed to reject the petition dated 24.02.2018 filed on behalf of plaintiff.

Defendant no 3 also filed a rejoinder of petition dated 04.04.2019 on dated 10.04.2019.

Heard, the learned counsels of both the parties and perused the case record and from perusal of the same it transpired that the plaintiff filed a injunction petition dated 24.02.2018 with regard to disputed land mentioned in schedule no 1 of the plaint but from perusal of the plaint it also transpired that disputed land is schedule no 2 of the plaint. From perusal of the show cause dated 20.07.2018 of the

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defendant no 3 it also transpired that the defendant did not raise this issue that plaintiff want a injunction above the schedule no 1, not on schedule no 2 of the plaint. It shows that the defendant knows that disputed land is on schedule no 2. On the other hand plaintiff filed a fresh petition on dated 04.04.2019 with prayer to read as schedule no 2 in place of schedule no 1 in the para no 4 and prayer portion in his injunction petition dated 24.02.2018. Defendant no 3 also filed his rejoinder and stated that the petition dated 04.04.2019 filed by plaintiff is fit to be rejected. In this circumstance it is cleared that it is a simple clerical mistake which does not prejudice to the defendant and defendant was not in dilemma regarding the disputed land and defendant no 3 also filed his show cause regarding schedule schedule no 2 of the plaint. Therefore, the disputed land is hereby read as schedule no 2 in place of schedule no 1 of the plaint . Accordingly, the petition dated 04.04.2019 is hereby disposed of.

Heard, also the learned counsels of both the parties on injunction petition and perused the case record and from perusal of the same it transpired that the plaintiff filed a suit for declaration of sale-deed dated 19.07.2017 as illegal, ineffective and void and for granting decree for eviction and directing the defendant 1st set to vacate the suit and arrears of rent mentioned in schedule no 3 of the plaint. From perusal of the photo copy of the counter file of the receipt it shows that the before the year 2000 all receipts are in the name of Bilat Mehta & Sita Ram Khediya and after that the receipt shows in the name of Ratan Kumar Khediya . From perusal the judgment and Decree of the P.S. 47/2000 (photo copy) it transpired that schedule no 1 of the

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compromise petition fell in the share of Ratan Kumar Kheriya and others bearing Khesra no 165/ 1121 ka, 174/ 1121/Kha , 174/6/1121 ga and 174/9/1121gha, area 14 Katha 87 Dhurki alongwith holding no 314,314Ka, 314,Kha and 314Ga. From perusal of the sale-deed dated 17.04.1941(photo-copy) it shows that the Ramjee Das Munga Lal executed a sale-deed in favour of Gulab Sundri Mahthain and Kamli Devi regarding the suit-land mentioned in schedule no 1 of the plaint who are the mother of Bilat Mehta & Sitaram Khediya. From perusal of the sale-deed dated 28.07.1962, 31.07.1962 and 20.09.1962 it also transpired that the RajKumar Jiveshwar Singh & Rajkumar Yaghneswar Singh s/o late Raja Bahadur Vishwar Singh executed the sale-deed in favour of Bilat Mehta & Sitaram Khediya regarding the suit-land mentioned in schedule no 1 of the plaint. From perusal of the plaint it shows that above mentioned land (all four sale-deed) a market of 38 shops were created by Bilat Mehta & Sitaram Khediya and after the P.S. 47/2000 the schedule no 1 of compromise petition area 14 Katha 87 Dhurki fell in the share of plaintiff and others. Therefore in the present stage of case shows that the defendant no 3 and his brother had sold the suit-land by execution of three sale-deed in favour of Bilat Mehta & Sita ram Khediya and uptill now this fact is un-rebutted . That, after the judgment and Decree of the P.S. 47/2000 the mutation proceeding started and suit-land mentioned in schedule no 2 of the plaint was mutated in the name of plaintiff and after that separate Rent Receipt were issued in favour of plaintiff. Defendant no 3 also accepted the factum of above mentioned three sale-deed dated 28.07.1962, 31.07.1962 and 20.09.1962 in the para no 15 of his written statement that the above

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sale-deed were executed by his brother RajKumar Jiveshwar Singh & others in favour of Bilat Mehta & Sitaram Khediya but he denied the execution of the sale-deed dated 17.07.1941 and stated that the Ram Jee Das & others have no right to execute the above sale-deed, but defendant did not support his contention though any documentary proof.

Learned counsel of the defendant no 3 argued that the out of 14 dhur 87 Dhuri plaintiff sold an area of 2 Dhur 12 Kanma from north but in schedule no 2 of the plaint no where the name of the purchaser has been given but from perusal of the case record it transpired that the date of the above sale deed did not come on the record so that it may not be cleared that the above sale-deed was executed before the filing of the suit or after the filing of the suit. Learned counsel of plaintiff & defendant filed a case law of Hon,ble courts. Considering the facts and circumstance of the case as well as the rival submission advanced on behalf of both parties, and perused the case law of Hon,ble courts, I find that the prima facie case and balance of convenience lies in the favour of plaintiff. So far as the irreparable loss is concerned, presently, I do not find any reason which will cause irreparable injury to the plaintiff, but it is a pious duty of the court to preserve the suit property till final adjudication of the suit. Hence the both parties are directed to not sell the suit property without the prior permission of the court and maintain status quo, till disposal of the suit, with respect to the suit-land. However this order will not prejudice to any party in the proceeding of the final disposal of the suit. Accordingly, the injunction petition dated 24.02.2018 filed by plaintiff is hereby disposed of.

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Put up the case record on 02.09.2019 for further proceedings.

(Typed & corrected by me)

Rakesh Kumar Tiwari
Sub judge I, Madhubani