

Title Suit – 102/99

Ramesh Upadhyaya Plaintiff

Vs.

Sri Mahendra Prasad Defendant

Order

13.06.19

Both plaintiff and defendant have filed their respective attendance. A petition dated 09.10.18 filed on behalf of the plaintiff and its rejoinder dated 25.10.18 filed on behalf of the defendant no. 2 and 3 is fixed for passing orders. Learned counsel appearing on behalf of plaintiff submitted that the suit has been filed for the partition of schedule I and II property in which vide order dated 30.05.2003 maintenance of status quo has been directed to both the parties which was confirmed in M.A. - 264/03 on 20.05.2003 by the Hon'ble High Court. The subject matter of lot (ii) schedule II property was very old which fell down owing to heavy down pour of rains on 07.06.17 comprising front chajja of 1st and IIInd floor towards the Ashok Raj Path. On 08.06.2017 the Executive Magistrate and Office incharge of Khajekalan P.S. visited the spot and directed plaintiff and the defendant to remove the aforesaid chajja in order to avoid any mishappenings. The plaintiff sought permission of the court to remove damaged portion of chajja on 08.06.17 towards the southern side of the structure. On 08.10.18 the officials of PMC came again and warned them regarding southern side of the chajja excroaching upon public land and so the plaintiff had to pay Rs. 50,000 vide cheque no 040955 to concerning authority. It was prayed on their behalf that permission be granted to remove the chajja towards southern and eastern wall of the aforesaid building.

On the other hand learned counsel appearing for the defendants objected to the prayer to plaintiff by submitting that defendant no. 3 is mother of plaintiff and defendant no. 2 has acquired the properties described in schedule II of the plaint by her own earning and savings so she is the exclusive owner of the property and vide gift deed dated

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27.10.1999 she gifted to her son defendant no. 2 and vide another gift deed dated 16.6.1996 towards the northern side to his wife. The plaintiff has failed to mention the properties gifted to his wife by his mother, and since defendant no. 2 and his sons have absolute right possession over the gifted house property, plaintiff alone has no authority to remove chajja towards southern and eastern side of portion. It has also been submitted that the plaintiff is deliberately delaying the progress of suit and eighteen long years have passed sine the Hon'ble High Court ordered maintenance of status quo in the suit in Misc. Appeal No. 264 of 2003. It was lastly submitted that the plaintiff deliberately omitted to mention the officials of PMC regarding the fact that defendant no. 2 is the owner of house but is adment on causing monitoring loss to the defendants. On the aforesaid grounds it was prayed on their behalf to reject the petition of plaintiff dated 09.10.18.

On the perusal of the case records and after considering the submissions made by learned counsel for the parties it transpires that vide order dated 8.6.17 this court directed plaintiff to remove the damaged portion of chajja which fell due to heavy rains in compliance of notice of officer in charge of khajekalan police station. The plaintiff has also admitted that he is not the sole owner of the property in paragraph 9 of the petition and he has requested the Branch Manager of IDBI Bank to stop payment of cheque of Rs. 50,000/- issued in favour of PMC. In view of the present situation both plaintiff and the defendant are directed to jointly report to court regarding the details of portion of chajja of building which is encroaching upon the public land so that an appropriate order could be passed. Office is also directed to call for a report from Patna Municipal Corporation, Patna City regarding encroachment if so any caused upon public land by the chajja of the building. Put up on

Subjudge – II

Patna City