

In the Court of Civil Judge (Sr. Division)-VI, Patna City.

Title Suit No. 158/2022

Anand Shankar Prasad & Other.....Plaintiff

Versus

Smt. Shakuntala Devi & Others.....Defendants

ORDER

05.07.2024

Both the parties are in attendance.

The present petition on behalf of plaintiff U/o XXXIX Rule 1 & 2 read with Section 151 CPC dated 02-08-2022 and further petition U/0 XXXIX R 1 & 2 CPC, dt. 14-03-2023 is fixed for order.

The plaintiff filed a petition on 02.08.2022 and further petition U/o XXXIX R 1 & 2 CPC also filed on 14.03.2023 with a prayer to grant temporary injunction to restrain the defendants from alienating and damaging the suit property or part thereof by passing of an order of temporary injunction till the disposal of suit for the ends of justice.

By way of a show cause dt. 10-01-2023, defendant No. 1 to 5 pleaded to reject the plaintiffs petition dt. 02-08-2022.

The case of the Plaintiff as set out in the Plaint in short is that Ram Dahin Gope was married to Ananto Kuer from whom he got 6 sons namely 1. Saryug Gope, 2. Satyadeo Gope, 3. Radhey Shyam Gope, 4. Shiyaram Gope, 5. Laljee Gope & 6. Sukhdeo Gope and all have died. Saryug Gope had a son namely Ramnath Gope who had two sons Sakaldeo Gope and Ramdeo Gope. Satyadeo Gope was married to Shakuntala Devi (Deft. No.1). Radhey Shyam Gope has married to Ramiya Devi from whom he had two sons namely Anand Shankar Pd. and Anand Kishore Prasad who are plaintiff No. 1 & 2. Ram Dahin Gope died leaving behind his sons aforesaid who

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inherited the property of their father and came in possession thereof but due to differences between sons of Ram Dahin, his son Sukhdeo Gope filed T. Suit No. 109/1972 against his mother and brother and the said suit was compromised by filing compromise petition dt. 08-09-1972 and the same has been accepted by the Id. court on 14-03-1973. The suit property was described in Schedule-I of the plaint of Title Suit No. 109/1972. The plaintiff and defendant determined their right in the area of the suit property but boundary has not been described. Saryug Gope sold 48 1/2 dec. land of plot no. 1804 and 1802 to Basu Gope but Basu gope did not come in possession since specific boundary did not disclose in the said compromise petition. Basu Gope has died leaving behind his sons who are defendant no. 6 to 10 herein. Satyadeo Gope was married to Shakuntala Devi from whom he got a son namely Subhash Chandra but Shakuntala Devi sold the share of her husband in CS plot no. 1804 and 1802 area 48 1/2 dec. land by virtue of four-registered deed her brother Mohan Pd. Shambhu Kumar Sinha, Shiv Dayal Singh and Basant Kumar, who are defts. no. 2 to 5. She sold the said land on 13-09-2019 and hence the plaintiff asked the defs. no. 1 to 10 to demarcate the area of 97 dec. land which was allotted to their father but they have refused, therefore the plaintiff have filed the suit. Now the defendants want to sell the suit property and they also want to damage the suit property by cutting soil of the suit land or any other kind, therefore plaintiff prayed that it is necessary and essential in the eyes of justice that the defendants may be restrained from alienating and damaging the suit property of an order of temporary injunction.

The defendant filed the show cause and written statement controverting the claim of the Plaintiff asserted that the suit is not maintainable in the eyes of law and further asserted that the plaintiff has got no cause of action for filing the suit and that the suit is barred by the Principle of Res-Judicata and S. 34 of the Specific Relief Act and Order VII R 3 of the CPC. The brief facts asserted by the defendant is that land having an area 1 acre 94 Dec. bearing its thana no. 38 Khata No. 1019 & 1020 Khesra No. 1802 & 1804 situated at mauja Simli Murarpur (South of NH), PS Bypass District Patna which has been fully described in Sch. I of the plaint along with several another properties

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were originally belong to Ramdahin Gope. Ramdahin Gope married with Ananto Kuer from whom said Ramdahin Gope six sons namely Saryug Gope, Satya Deo Gope, Radhey Shyam Gope, Siya Ram Gope, Lal Ji Gope & Sukhdeo Gope. After the death of said Ramdahin Gope, when the legal heirs of deceased Ramdahin Gope were facing several type of difficulties in managing their share in jointness of the family then one son of said Ram Dahin Gope namely Sukh Deo Gope had filed a T. Suit No. 109/1972 for getting the decree of partition with respect to the entire left estate of deceased Ramdahin Gope including the plot in question. During the pendency of the Title Suit No. 109/1972, all parties of the T. Suit No. 109/1972 have compromised the subject matter of the T. Suit No. 109/1972 and accordingly they have partitioned the entire left estate of deceased Ramdahin Gope by metes and bound and accordingly came and remain in peaceful possession of their Khass allotted share and accordingly then after they have jointly filed a compromise petition dt. 08-09-1972 before the Id. Sub Judge-I Patna on the judicial record of T. Suit No. 109/1972. Considering the facts and circumstances as well as requirement of law, the Id. Sub Judge-I Patna has been pleased and by the vide order dt. 14-03-1972 decreed the T. Suit No. 109/1972 in the terms of compromise, which has never been challenged by any party till today before the Id. court. According to the aforesaid partition the lot No. (i) of the Sch. I property of this Written Statement has exclusively allotted to the said Satya Deo Gope, whereas the lot no. (ii) of the Sch. I property of this written statement has exclusively allotted to the said Saryug Gope, whereas the lot no. (iii) of the Sch. I property of this written statement has exclusively allotted to the said Radhey Shyam Gope and accordingly they came and remain in peaceful possession of the same as an owner and occupier of the same as also quite clear from the para no. 6 of the compromise petition dt. 09-08-1972. After few years later since the date of passing the compromise decree dt. 14-03-1972 as passed in Title Suit No. 109/1972, the said Satya Deo Gope had died leaving behind his son namely Subhash Chandra Gope as his legal heirs and successor and hence after the death of deceased Satya Deo Gope his entire left estate have exclusively been inherited by the said Subhash Chandra Gope. Subhash Chandra Gope had died leaving his widow

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namely Shakuntala Devi as legal heirs and successor and hence after the death of deceased Subhash Chandra Gope his entire left estate have exclusively been inherited by his widow namely Shakuntala Devi and accordingly said Shakuntala Devi came and remain in peaceful possession of the same as its owner and occupier of the same. After few years later since the death of said Subhash Chandra Gope when the said Shakuntala Devi was in dire need of money then said Shakuntala Devi has sold her exclusive share through the four registered sale deed dt. 13-09-2019 to Vasant Kumar bearing its deed No. 8633, through the four registered sale deed dt. 13-09-2019 to Shambhu Kumar Sinha bearing its deed No. 8634, through the four registered sale deed dt. 13-09-2019 to Shiv Dayal Singh bearing its deed No. 8637, through the four registered sale deed dt. 13-09-2019 to Mohan Prasad bearing its deed No. 8638 and accordingly put the khas purchased properties as and owner and occupiers of the same in the full knowledge of entire locality as well as society as also self-admitted by plaintiffs in para-5 of the plaint. After purchased the same all aforesaid purchasers being in the capacity of the exclusive owner and occupier of their khas purchased properties have mutated their name over their khas purchased property in the record of the Govt. of Bihar and accordingly use to pay its malguzari and all other necessary taxes to the competent authority of the same as an owner and occupier of the same in the full knowledge of entire locality as well as society.

Heard both the parties on Injunction matter in detail, and also perused the pleadings and documents of the parties. It is well settled principle of law that for grant of temporary injunction U/o XXXIX R 1 & 2 CPC read with S. 151 CPC the plaintiff has to establish following three things :- 1st prima facie case in his favour, 2nd balance of convenience in his favour and 3rd irreparable damage to plaintiff.

Now, this court will ascertain whether the following above stated three conditions have been satisfied by the plaintiff for grant of relief U/o XXXIX R 1 & 2 and U/s 151 of the CPC.

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1. Prima facie case: As far as prima facie case in favour of plaintiff is concerned, it is apparent from the self admission of plaintiff in plaint and injunction petition of plaintiff that the cause of action of plaintiff is based on the fact that Sukhdeo Gope filed Title Suit No. 109/1972 against his-mother and brother and said suit was compromised by filing the Compromise petition dt. 08-09-1972 and the same has been accepted by Id. court on 14-03-1973. The suit property was described on Sch. I of the plaint in TS 109/1972. All the legal heirs and successor of Lt. Ram Dahin Gope accepted the mutually agreed terms and conditions and decided the dispute and the compromise petition after due inquiry was accepted by the court by order dt. 14-03-1973. As per compromise petition between the plaintiff and defendant of the said suit a compromise petition was prepared and filed and the term No. 4 of the said compromise petition, specify the allotment of land of plot no. 1804 & 1802 in the suit. It was agreed between plaintiffs and defendants that the total area of suit property was 1.95 acre which was one of subject matters of partition between the parties. Preliminary decree was drawn in the aforesaid partion TS 109/1972. The plaintiff and defendants all accepted to take share of the land as stated in compromise petition and all accepted the said area and duly signed the compromise in the said suit and compromise was accepted. But, on the basis of said compromise decree no final decree upto now has been prepared and as such parition was not carried in metes and bounds. The cause of action for the suit arosed on 16-04-2022 when defendant No. 2 to 5 claiming themselves to be purchaser from defendant No. 1 tried to make construction of boundary without partition with specific boundary. It is to be noted that the plaintiff had prayed that on adjudication of the terms of the compromise decree accepted in TS No. 109/1972, it be declared that the plaintiffs are the owner of 97 decimal out of 1.95 Acre of land situated at Mauza Simli Murarpur, PS-Malsalami, District Patna bearing Khata No. 1020 and 1019, Plot No. 1804 and 1802 and further prayed that the boundary of the said area of allotted land of plaintiff be fixed by appointment of Survey Knowing Advocate Commissioner and

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the area of 48 1/2 decimal of defendant No. 2 to 5 and the area of land measuring 48 1/2 decimal of defendant No. 6 to 10 be fixed in the said decree.

This court is of the view that the plaintiff is trying to raise an issue which has already been decided in compromise decree passed in TS 109/1972 through mutual agreement. The plaintiff never challenged the compromise decree and now he wants adjudication on the basis of terms of compromise decree in TS No. 109/1972. The issue raised and the relief prayed by the plaintiff has already been adjudicated in the above stated compromise decree. Now, this court will be unable to re-adjudicate the issue as it is barred by the principle of resjudicata. It is the contention of the plaintiff that the plaintiff and defendant determined their right in area of the suit property but boundary was not described. But, this court is of view that the plaintiff did not challenge the preliminary decree on the basis of compromise petition for a very long time and now he wants the boundary of the area of allotted land (on the basis of compromise decree) be fixed by appointment of Survey Knowing Advocate Commissioner. When the boundary of land allotted to plaintiff and defendant has not been fixed then how can this court restrain the defendants from alienating and damaging the suit property.

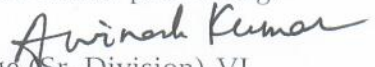
Hence, after considering the above facts and circumstances this court is of the view that the plaintiff has no prima facie case in his favour.

2. Balance of convenience: As far as balance of convenience is concerned, it is clear that the balance of convenience is not in favour of the plaintiff. On the other hand, granting temporary injunction may lead to interference in the right of defendant accrued to them through compromise decree in TS 109/1972. The parties are already in their possession on the basis of compromise decree TS 109/1972 dt. 14-03-1973. That very decree was not challenged for long time. If the boundary is not demarcated in the preliminary compromise decree then how can this court pass an order of injunction.

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3. Irreparable damage of plaintiff: There is no material on record which goes on to show that if injunction is not granted the plaintiff would suffer irreparable damage.

Hence after considering the above facts and circumstance this court deems it proper in the interest of justice to reject the petition of the plaintiff U/o XXXIX R 1 & 2 read with Section 151 of the CPC dt. 02-08-2022 and also reject the petition U/o XXXIX R 1 & 2 CPC dt. 14-03-2023. Put up on 22-8-24 for further proceeding.


Civil Judge (Sr. Division)-VI,
Patna City