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

Title Suit No. 220/2022

Pankaj Kumar……….Plaintiff

Versus

Mostt. Lalti Devi & Others……….Defendants

ORDER

20-07-2024 Plaintiff and Defendant No. 1 are in attendance and they are represented through their learned counsel.

The present petition on behalf of plaintiff U/o 39 Rule 1 & 2 read with Section 94 & 151 of the CPC dated 15-09-2022 is fixed for order.

The plaintiff filed a petition on 15-09-2022 with a prayer to grant temporary injunction to restrain the defendants from selling/alienating/encumbering/transfering and also to restrain from changing the nature, character and physical feature thereof by passing of an order of temporary injunction till the disposal of suit for the ends of justice.

The prayer of the petitioner/plaintiff as set out in the petition in short is that:- In 2017 the defendant No. 1 fallen in some legal financial need for construction of house and also for her better treatment, so the defendant No. 1 taken an amount of Rs. 18,50,000/- as loan from the plaintiff with an assurance to return the same without interest certainly two years and entered into a contract mortgaging the schedule suit land in favour of the plaintiff which has been purchased by her through registered sale deed No. 8899 dt. 05-10-2001 and which boundary has been modified with mutual consent/agreement by executing & signing a Panchnama dt. 10-12-2012. Further as a security, in liew of the aforesaid amount taken from the plaintiff, the defendant No. 1 delivered the possession of the land and all the documents related to the said land. Further, she executed a mortgage bond cum undertaking (Akrarnama) for the same on

21-07-2017 in favour of plaintiff and admitting the mortgage and delivery of possession of land & its title deeds & papers to the plaintiff and since then the plaintiff is in possession over the schedule property from the date of mortgage i.e. 21-07-2017. The plaintiff craves leave from this court to read & refer the original plaint, said mortgage bond cum undertaking dt. 21-07-2017 and the panchnama dt. 10-12-2012 at the time of hearing of the injunction matter. Inspite of the said assurance, assertions & declarations the defendant No. 1 failed/neglected to repay the loan amount and violated the terms and conditions. After completion of agreed period of two years in or about first week of August 2019 the plaintiff demanded payment of the said loan amount from the defendant No. 1 for which she requested for further two months time, but again she did not stand on her words and mischievously trying to take forcible possession of the mortgage land as well as grab the plaintiff's house on the strength of the defendant No. 2 who always comes to the plaintiff's house and gives threatening to vacate the house on the plea that he has purchased this house from the defendant No. 1. For this, plaintiff contacted to defendant no. 1, but she denied the execution of the sale deed in favour of the defendant No. 2 and further requested for further six months and thereafter she will pay in installments within one year, but again she failed doing so. Thereafter since 24-05-2022 repeatedly on several dates the defendant No. 2 along with his criminal minded associates attacked & entered the house of the plaintiff and tried to take forcible possession on the plea that he has purchased this house. The matter was reported in writing to the Sultanganj PS and other higher police authorities but no steps were taken against them. It is pertinent to mention here that after execution of the said mortgage bond cum undertaking in favour of the plaintiff with delivery possession the defendant No. 1 is bound to perform her part of obligation described in the said mortgage bond cum undertaking and has no independent, absolute & alienable right & interest to sale the mortgage property to a stanger. Apart from that the defendant No. 1 has never made any construction over the said land then how can she sell the land with house as claimed by the defendant No. 2. So, if any such deed/document is produced by the defendant No.2 the same is not only sham and fictious documents but the same is wrong, illegal,

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collusive & fraudulent one. There is every possibility that the defndants with an ill intention, ulterior motives may demolish the pucca structure of the plaintiff's house and remove the moveable goods & articles and other valuable items etc. Under the aforesaid facts quite apparently the plaintiff has a prima-facie case and in granting injunction at this stage, the balance of convenience is also in favour of the plaintiff and will prevent unnecessary multiple litigations. Under the reasons stated, the petitioner has prayed that the Hon'ble Court may be pleased to take up the matter as very urgent and issue notice to the defendant to show cause as to why they be not restrained from selling/alineting/encumbering and/or transferring the suit land in any manner and also from changing the nature, character and physical feature thereof as well as from creating disturbances in the legitimate right of possession & enjoyment of the petitioner over the suit land till the disposal of the suit and in the mean time they be directed to maintain status-quo and after hearing the parties pass an order for temporary injunction restraining the defendants in terms of the notice to show cause.

By way of a show cause dt. 24-01-2023 defendant No. 1 and by way of rejoinder dt. 02-02-2023 defendant No. 2 pleaded to reject the plaintiff's petition dt. 15-09-2022 on the ground that the petition is not maintainable. The defendant No. 1 & 2 in their show cause and rejoinder respectively have further contended that the mortgage deed cum Akrarnama on the basis of which the petitioner claims his right is forged, fabricated and unregistered document which cannot be relied upon by the court. The defendant No. 1 never executed in mortgage deed cum Akrarnama dt. 21-07-2017 in favour of plaintiff. The plaintiff is not in possession of the suit property and defendant has got perfect right, title and possession over the suit property. The defendant No. 1 denied having taken a loan of Rs. 18,50,000/- from the plaintiff for construction of house and denied the delivery of document relating to suit land mentioned in the plaint to plaintiff.

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

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of temporary injunction U/o 39 R 1 & 2 CPC read with S. 94 & 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 assertain whether the following above stated three conditions have been satisfied by the plaintiff for grant of relief U/o 39 R 1 & 2 and U/s 151 of the CPC.

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 mortgage bond cum undertaking executed by defendant No. 1 in favour of the plaintiff for payment of Rs. 18,50,000/-. In that mortgage bond the defendant No. 1 admitted the mortgage and declared that unless she returns the whole amount according to the said loan amount, she will not sell the scheduled land to any third person and if in any case circumstances arises to sell then plaintiff would have first right over the said scheduled land along with other terms and conditions. In the meantime defendant No. 1 sold the property to defendant No. 2. Accordingly, the petitioner has prayed for temporary injunction to restrained the defendant from selling, alienating , encumbering or transferring the suit scheduled property in any manner. But, it is to be noted that the petitioner/plaintiff is claiming his right on the basis of unregistered mortgage bond cum undertaking which she calls Akrarnama. As per law mortgage deed in which value of property is more than Rs. 100/- needs to be compulsorily registered and unregistered mortgage bond cum undertaking (Akrarnama) has no value in the eyes of law. Further, as per law a mortgager cannot be restrained from alienating the mortgaged property. The condition imposed on defendant No. 1 in mortgage deed restraining defendant No. 1 from alienating the mortgage property to any stranger and condition that if in case any circumstance arises to sell then the plaintiff would have first right over the said land is void under the Transfer of Property Act.

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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 legal right of defendant.

3. Irreparable damage of plaintiff: There is no material on record produced by the petitioner which goes on to show that if injunction is not granted the petitioner/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 39 R 1 & 2 read with Section 94 & 151 of the CPC dt. 15-09-2022. Put up on 07-9-24 for further proceeding.

Avinash Kumar

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