

In The Court Of Sub-Judge, Dhamdaha

T.S. No. 113/2011

Md. Inshul -----Plaintiff
Vrs.

Md. Shamshul Aalam and others -----Defendants

22/07/19: Attendance has been filed on behalf of both the sides.

The case record put up before me for order on the injunction petition filed by plaintiff on 11/04/17 and its rejoinder dated 06/05/17 filed by defendants no. 7,14,15,27 and 31.

The petitioner, in brief has submitted that this suit has been filed for declaration that the schedule A property is joint family property of plaintiff and defendants 1st, 2nd and 4th party and plaintiff has got 1/6 share as per Mohammedan law. Plaintiff has also prayed for relief that sale deed no 183 dated 08/01/2007 is illegal collusive and void ab initio and not binding upon plaintiff and there by defendants 14 and 15 have no legal right to sell the same which is schedule B land and further that the defendants 5th party have not acquired right title over this schedule B land by virtue of the sale deed.

According to plaintiff 1 Lal Mohammad Ansari was the common ancestor of plaintiff and defendants 1st, 2nd, 3rd, and 4th party of whom son Tital Miyan died before revisional survey operation in 1952-53. He had four sons namely Lal Mohammad, Hazi Mohammad Mansoor Ali, Md. Hanif and Samshudin Miyan were successors. They jointly own and possess property of Mauza village Kukroun , mauza Rajghat , Mauza Tharhi Raju , Mauza Halalpur and mauza Khanua under ps Dhamdaha and Mauza Harrai under PS B. Kothi of district Purnea and most of the land were recorded jointly in their name. Later on late Hazi Md. Mansor Ali filed a title suit 117/88 in the court of Munsif Sadar Purnea against his aforesaid co sharer for the relief that the schedule A property of T.S 117/88 was allotted to the plaintiff by an amicable family partition dated 5th July 1963 through a deed of *Yadasatnama* among the co-sharer. The deed was drafted and acted upon since then and accordingly Hazi Md. Masoor Ali was coming in exclusive possession and was paying rent to Govt. and has perfected right title over the same. T.S 117/88 was disposed of on 16th Sept. 1998 on the basis of compromised petition dated 08/09/1998. The aforesaid Lal Mohammad Ansari died during the pendency of TS 117/88, his name was deleted on 17/05/1990 and his legal heirs, five sons, namely **Hasim, Kasim, Inshul, Shamshul and Islamudhin** and two daughters Bibi **Fatima** and **Bibi Maimuna** were impleaded in TS 117/88.

In the present case plaintiff and defendants no. 7 are sons of late Lal Mohammad , defendants 2 to 6 and 16 are heirs of Md. Hasim; defendants 2nd

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party are sons and daughters of Md. Kasim; defendants 3rd party are heirs of Md. Islamudhin and defendants 4th party. For petitioner, the aforesaid compromise decree dated 16/09/98 in TS 117/88 **Schedule Ka** were allotted to late Hazi Mansoor Ali and his sons and **Schedule Kha** lands were allotted to the late Lal Mohammad which was represented by his grand sons. The **schedule Kha** land under the term in TS 117/88, total land measuring 7.07½ acres were allotted to late Lal Mohammad and his heirs who were entitled to own and possess after his death. Accordingly plaintiff and defendants 1st, 2nd and 4th party jointly owned and possessed those 7.07½ acres of land as per their defined share.

According to petitioner, this 7.07½ acre land under mauza Kukraun and Tharhi-Raju given in schedule A of this plaint is the subject matter of this suit. As per compromised decree passed in TS 117/88 this suit land were jointly owned and possessed by 1st, 2nd and 4th party and started utilizing the same as per their convenience till today. The plaintiff and defendants 1st party and 2nd party members are entitle to get 1/6th share each and defendants 4th party who are two sisters and their heirs they are entitle to get 1/12th share each from schedule A properties. Plaintiff has even submitted that he is in possession of 1/6th share of schedule A properties.

It has been alleged that on 12/09/10 plaintiff was looking after cultivation work over his share of land in RS plot no 153 RS khata no 366 in Mauza- Khanua and the defendants 5th party (27 to 31) came there and told the plaintiff that they have already purchased entire land measuring 4 acres of suit in plot no 153 from vendors, who are defendants no. 14 and 15 by virtue of registered sale deed dated 08/01/2007. They have also shown the sale deed and told that as TS 58/08 has been dismissed, so I should give up possession their of as early as possible and also threatened the plaintiff that if he will not vacate purchased land then he will face dire consequences. This plaintiff however flatly refused this unlawful demand of the defendants 5th party.

It has been further stated that the plaintiffs obtained the required information in this regard. He came to know that the TS 58/08 in the court of Sub Judge I Purnea has already been dismissed on 16/08/10 in default of proper pairvee of plaintiffs. Plaintiffs has further stated that this TS 58/08 was filed for partition of 1/6th share of the properties left behind by the common ancestor late Lal Mohammad. This plaintiffs was impleaded as defendants no 1 in that TS 58/08 as he was also entitled to get 1/6th share their in. It is admitted that the suit plot in TS 58/08 and of this present suit are same. Plaintiffs of TS 58/08 and purchaser defendants(def. 5th party) of this suit who were the defendants 4th party in TS 58/08 in collusion with each other and to jeopardize the share of the other co sharer knowingly left pairvee in that case which was dismissed on 16/08/10. Due to the consistent threat by the defendants 5th party to give up his cultivating possession of the suit land the

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plaintiffs was compelled to file this suit to exclude the plaintiffs 1/6th share in schedule A land.

The purchased land given in schedule B was illegally sold by defendants 14 and 15 which was joint property of plaintiffs and defendants 1st, 2nd and 4th party to defendants 5th party by sale deed dated 08th Jan. 2007. This sale deed is a sham and collusive transaction which has been challenged as void ab initio in this suit. Plaintiffs requested the defendants 2nd and 4th party to exclude his share in schedule A property to which they paid no heed, plaintiffs also requested to defendants 14 and 15 for cancellation of sale deed dated 08/01/2007 which was refused. The defendants 14 and 15 both sons of defendants 7 Md. Islamudhin have again sold land in khata no 280 plot no 119 are 1.59 acres in schedule A land which is joint family property to the vendees Md. Kamil Ansari and Md. Imtiyaz Ansari by virtue of sale deed 8159 dated 09/06/11 during the pendency of this suit. Defendants 14 and 15 giving consistent threat to give up possession of the plot no 119. On 23/09/11 at the instant of defendants 14 and 15 caused immense damaged to the plaintiffs bananas plants on the said plot no 119. They have illegally interfere the peaceful cultivating possession of the plaintiffs. The plaintiffs have given information to the local Police and a case under sec. 107 of Cr.P.C is pending before the court of SDM Dhamdaha. Still the defendants and the purchaser are bent upon to interfere with possession of plaintiffs during the pendency of this suit which compelled plaintiff to file this petition praying for injunction order against the defendants 3rd and 5th party. Earlier also an injunction petition on 17/09/13 was filed but the same was dismissed as not pressed. There after also defendants 3rd and 5th party disturbed the plaintiff by cutting the banana trees and by dismantling the *Phoos* house constructed over there. For that plaintiffs had also lodged FIR as Dhamdaha PS case no. 211/16 and another criminal case Dhamdaha PS case no 04/17 dated 06/01/17 was also lodged against defendants 3rd and 5th party members. According to plaintiff these defendants 3rd and 5th party causing immense harm and injury to the plaintiffs during the pendency of the suit by jeopardizing his legal interest, so they have no alternative than to pray for temporary injunction. The plaintiffs have a good prima facie case and balance of convenience also lies in his favour and if injunction not granted then they will sustain irreparable loss. Accordingly prayer has been made by the plaintiffs to restrain the defendants 3rd and 5th party from disturbing the peaceful possession of plaintiffs over the suit land and also not to alienate the same during the pendency of the suit.

In its rejoinder the defendants no. 7,14,15 and 27,31 have, in brief, submitted that earlier also one such injunction petition has been dismissed as not pressed. The above petition is not maintainable. The present suit is filed for partition and for declaration that defendants no. 27 to 31 have no right, title over the schedule B land by virtue of registered sale deed dated 08/01/07 along

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with relief of permanent injunction against them. The present suit is not properly valued and plaintiffs has not paid ad volerum court fee. This petition is also not tenable as plaintiffs has no prima facie case of balance of convenience in his favour. The present suit for partition is also not maintainable under order 23 R 3 A of C.P.C. The earlier stated compromise decree dated 16/09/98 and decree passed in TS 117/88 is final as Misc. filed by plaintiffs for setting aside compromise decree has been dismissed. Later on a another collusive suit TS 58/08 has also been dismissed on 16/08/10.

According to defendants no. 7,14,15 and 27,31 the compromised decree passed in TS no. 117/88 in the court of Sadar Munsif, the schedule B of the plaint along with other land was exclusively given to defendants no. 14 and 15 and they came in possession there of. These defendants transferred the schedule B land in favour of defendants no. 27 to 31 on 08/01/2007 through a registered sale deed and put them in possession after that defendants no. 27 to 31 got the purchased land mutated vide mutation case no. 962/2007-08 on order dated 18/09/2007. Prior to that halka karamchari made local inspection and found these defendants in possession over the schedule B land and even circle inspector recommended for mutation of their names and after that mutation order was passed. After this purchase of lands over schedule B, the plaintiffs in conspiracy with other defendants tried to disturb the possession of defendants no. 27 to 31. After that the purchaser lodged an FIR 27/07 before Dhamdaha Police who also found possession of these defendants over schedule B land. Proceeding under sec. 107 Cr.P.C was initiated by SDM Dhamdaha against plaintiffs and others. Even in a proceeding under sec. 144 Cr.P.C between the parties relating to schedule B land the Ld. SDM Dhamdaha made the rule absolute against plaintiffs of this suit. That the plaintiffs when disheartened from all corner filed this false suit for partition, claiming a 1/6th share in schedule A land claiming it to be joint family property. The schedule B land given to defendants no. 14 to 15 and being rightful owner transferred land to defendants no. 27 to 31 vide sale deed dated 08/01/07. After having got mutated their names obtained rent receipt.

Accordingly plaintiffs have got no prima facie case and balance of convenience lies in the favour of these defendants and plaintiffs will suffer no loss if the order of injunction is not granted rather it is the defendants who will suffer great loss and injury. Citing all these grounds the defendants have prayed for rejection of this petition.

I heard both the sides and perused the case record. The full details of this suit and the relief has been given in the earlier para. Basically plaintiffs has sought 1/6th share in schedule A property claiming to be joint family property. Plaintiffs have also challenged the sale deed no. 183 dated 08/01/07 as illegal and void as because defendants no. 14 and 15 had no legal right to sell the lands given in schedule B which is part and parcel of schedule A land

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and also to declare that the purchaser who is defendants 5th party have acquired no valid right and title in properties of schedule B.

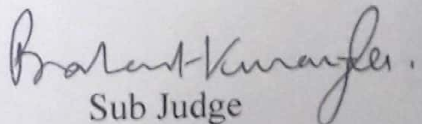
It is a cardinal principle of law that unless and until a compromise decree is valid and any sale deed that has not been declare as void and illegal, the same are valid documents . In this particular case plaintiff is seeking injunction order to restrain the defendants 3rd and 5th party (Defendant 27 to 31) from interfering the peaceful cultivating possession over the suit land. Admittedly defendants 14 and 15 has transferred lands of schedule B in favour of defendants 5th party which they themselves have obtained from a compromise decree dated 16/09/98 passed in TS no. 117/88.

In para 13 of this petition the plaintiffs has submitted that he is in possession of 1/6th share of schedule A property similarly the other co sharer are also in possession over the suit land over their respective shares.

It has been decided by the Supreme Court in Md. Ibrahim Khan Vs. Pateswari Prasad Singh, AIR 1960 Allahabad 252 that in a suit for mere declaration no ad- interim injunction can be granted. It has been also held by the Hon'ble court that if the disputed land is in joint possession of both the parties or of all co- owners no injunction can be granted against interference into possession of one co-owner by another co-owner except 1. against the ouster 2. Against construction or demolition of undivided property and 3. Against transfer or sale etc. of undivided immovable property. In Gangu Bhai Vrs. Sita Ram, AIR 1983 SC 742. In the present case plaintiffs has brought this suit as co-sharer and he has challenged a sale deed. Equity requires if a purchaser is a bonafide purchaser he can't be restrained from enjoyment of properties unless the sale deed declared by law as illegal and void. Considering all facts and circumstances of the case and the nature of relief sought in this case, prima facie case is not in favour of plaintiffs and balance of convenience rather lies in favour of the defendants 5th party who are purchasers of schedule B land.

On the basis of above discussion, I think the plaintiff has failed to show all three ingredients for granting injunction in his favour, so the present injunction petition dated 11/04/17 is dismissed.

Put up the case record 16/08/19 for further proceeding.


Sub Judge
Dhamdaha