

The Court of Sub-Judge Baisi, Purnea

T.S. -30/2019

CIS – 30/2019

In Re :

Bibi Suhagi & others

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Plaintiffs

Versus

Md. Ayub

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Defendant

ORDER

01.10.2019

Pr: Ld. Counsel for the Plaintiffs

None for the defendants.

1. The case record was put up for appearance of defendant today, but defendant did not appear. Perusal of the records shows that service was made personally on the sole defendant by the process server, but he refused to receive the summons. The service report was affirmed before the Nazir. Besides, postal summons had also been sent by Registered Post and more than 30 days had elapsed. Accordingly, service was confirmed on 23.09.19 and case was fixed for today awaiting the appearance. But, the defendant did not appear even today. So, the defendant be proceeded ex-parte.

2. Now, hearing is to be done on petition filed on behalf of the plaintiffs under Order 39 Rule 1& 2, CPC dated 09/08/19. Heard plaintiffs. Perused the case record and considered the submissions made on behalf of the parties.
3. The suit has been filed for declaration that the sale deed no. 6902 dated 19/11/2005 as being fraudulent, invalid and inoperative. It has been contended that the plaintiff has good prima facie case. The balance of convenience also lies in his favour and would suffer irreparable loss, if the defendants are not restrained by injunction. It has been contended that as per law, the properties in dispute must be preserved in its position as it was at the time of filing of the suit and defendants be restrained from constructing the pucca boundary wall upon the suit lands.
4. The defendant had not appeared in this suit and so, there is no show cause reply or rejoinder on his behalf.
5. The Sale Deed challenged is a registered instrument, which carries a presumption of genuineness and validity. Burden lies upon the plaintiff to prove that it is illegal, fraudulent, or inoperative for want of consideration, which would be done during the course of trial. Execution of deed is admitted fact. There is no imminent danger of wastage or alienation. Construction of boundary wall would neither diminish the value of the land nor would amount to wastage. So, no prima facie case is made for injunction. Nor any irreparable loss would be caused to plaintiff.
6. In view of the grounds stated in preceding paragraphs, the court is of opinion that there is no sufficient ground to restrain the defendants from constructing the pucca boundary wall upon the suit lands. So, the prayer of the plaintiff is rejected and petition of the plaintiff is hereby disposed off. Put up on ...21/10/2019... for further proceeding of the main suit.

Sub-Judge -Baisi
Purnea