

Order dated 20/12/2024

The Ld. Advocate of the plaintiff moves a petition u/o.39, R.(1) and (2) r/w section 151 of CPC and the prayer is allowed. As per report of sheristadar no caveat is pending in connection with the suit property.

The submission of the plaintiff is that the original owner of the schedule mentioned suit property was Purnima Das, who was the mother of the plaintiff. She purchased the suit property by registered deed no. 04526 / 2011 of ADSR, Cossipore, Dum Dum and took possession accordingly. The mother of the plaintiff was house wife and the suit property was purchased from the money of the father of the plaintiff. The father was employee of Indian Railways. The plaintiff was residing with her mother during her life time. The said Purnima Das died intestate on 16/06/2024 leaving behind the plaintiff and the proforma defendant as her legal heirs. Then the plaintiff came to know that her mother gifted the suit property to the daughter of the plaintiff. The plaintiff got mutual divorce and she is living separate with this daughter of the plaintiff. This daughter never resided or possessed the suit property and now taking the advantage of the gift deed the daughter being the defendant of this case is trying to disturb the peaceful possession of the plaintiff over the suit property with an intention to dispossess him from the suit property. So, the plaintiff has filed this instant suit and prays for necessary order of ad interim injunction restraining the defendant from selling or encumbering or alienating the suit property on the basis of the gift deed dated 02/11/2021 executed by Late Purnima Das.

In support of his petition the plaintiff has filed copy of following relevant documents including the purchase deed and gift deed of the mother of the plaintiff, tax receipts and other relevant documents of the suit property for perusal of this Court.

After hearing submissions on part of the plaintiff and perusal of available materials on record and documents, it has been found that the original owner of the suit property was late Purnima Das who gifted the suit property to her grand daughter i.e. the daughter of the plaintiff. The plaintiff has challenged the gift deed of his mother and files this suit for necessary reliefs along with ad interim injunction to stop the effectiveness of the alleged gift deed with an allegation that the defendant, being his daughter, is trying to dispossess him from the suit property.

Now the question is, whether at this stage ad interim injunction order can be given against the defendant for the suit property. From the averment of the plaint it has been found that the plaintiff is the daughter of the defendant and unmarried. It is the law of the country that the father have to provide maintenance and necessary facilities for the livelihoods of the daughter. Accommodation is including that necessities. It is the allegation of the plaintiff that his daughter is trying to dispossess him from the suit property. Whether the gift deed is valid or not is a matter of fact and required to be prove by evidence. But at this stage, only on the basis of submission that the defendant daughter is trying to dispossess the plaintiff father from the suit property, no restrain order can be passed without hearing of the defendant that whether she is residing in the suit premises or whether she has any alternative accommodation. The alleged gift deed was registered one and executed by a grand mother in favour of her grand daughter. So, at this stage, the plaintiff in prima facie has failed to establish his urgency and entertainment to avail the order of ad interim injunction against his unmarried daughter in respect of the suit property.

Hence it is

ORDERED

that the petition of the plaintiff under Order XXXIX Rule 1 and 2 read with section 151 of CPC for ad interim injunction is hereby refused at this stage.

Issue notice upon the defendant to show cause within next date as to why the order of temporary injunction shall not be granted as per the prayer of the plaintiff.

The plaintiff is directed to put in requisite at once.

Office is directed to issue the same.

To date (12/03/2025).

Civil Judge (Jr. Divin)
Bidhannagar (i.c)
J.O. CODE : WB 01296