

Title Suit No.325 of 2022 (CIS.325 of 2022)

Order no.09, dated 28.08.2023

Today is fixed for hearing the petition for temporary injunction.

Both sides file separate haziras.

The petition for temporary injunction is taken up for hearing.

The following is a gist of the petition for temporary injunction filed by the plaintiffs namely Mira Nag and another against the defendant namely Shikha Bhadra:-

Inter alia, Hari Bhusan Nag purchased the 'A' schedule property in his wife namely Tagarprobha Nag's name and inter alia, constructed a single storied residential house and started to stay there. Subsequently, plaintiff no.1's husband and plaintiff no.2's father constructed the second and third floor on the existing ground floor. After the demise of Tagarprobha Nag and Hari Bhusan Nag their son namely Prabir Kumar Nag and four daughters namely Rita Sarkar, Iva Roy Chowdhury, Seema Dey and the defendant became owners of the 'A' schedule property to the extent of each having 1/5th share therein. Inter alia, the said four daughters transferred their shares in the 'A' schedule property in favour of Prabir Kumar Nag who accordingly, got his name L.R. recorded and paid revenue to the Government and Burdwan Municipality being the owner of the 'A' schedule property. Prabir Kumar Nag inter alia, transferred 02 cattahs 03 sqft. of demarcated property in the suit plot to Iva Roy Chowdhury by way of gift but Prabir Kumar Nag became owner of 5.929 cattahs in the suit plot consisting of three storied building for private and rental usage. The plaintiff is in constructive possession of the dwelling house in the suit property and in constructive possession of the same also through tenants which her Lt. husband namely Prabir Kumar Nag inducted. Inter alia, Prabir Kumar Nag expired leaving behind the plaintiffs as his only legal heirs. After the demise of Prabir Kumar Nag the plaintiffs were taken aback by Ld. Advocate's notice dated 17.03.2021 alleging that that the 'A' schedule property had been transferred to the defendant by Prabir Kumar Nag by virtue of the document as mentioned in schedule 'B' and inter alia, calling upon the plaintiffs to vacate the suit property. Inter alia, the said disclosure and demand was false. Inter alia, on securing a photocopy of the 'B' schedule Deed the plaintiffs were shocked to discover that the signature of Prabir Kumar Nag in the 'B' schedule Deed was in variance with the usual signature of Prabir Kumar Nag. Inter alia, the 'B' schedule document was fraudulent and manufactured one. Inter alia, Prabir Kumar Nag did not execute the 'B' schedule Deed, he did not put signature in the 'B' schedule Deed, he did not place it for registration, Prabir Kumar Nag had no intention and necessity to transfer the 'A' schedule property to the

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defendant. Inter alia, the 'B' schedule gift Deed is a sham Deed. Inter alia, the 'B' schedule Gift Deed has not been acted upon or accepted and is inter alia, illegal, void, bereft of legal effect. Inter alia, the defendant in a National Newspaper on 24.07.2022 has published a notice for sale of the 'A' schedule property and inter alia, has tried to mortgage it. Inter alia, the plaintiffs have prayed for temporary injunction restraining the defendant from mortgaging/alienating/forcibly entering/ encroaching upon the 'A' schedule property, from changing the nature and character of the same, from preventing the plaintiffs from continuing their lawful and bonafide possession of the same.

The defendant filed W/O against the petition for temporary injunction in which the defendant denied the most of the contents of the petition for temporary injunction. The following is a gist of the W/O filed by the defendant against the petition for temporary injunction:-

Inter alia, the defendant is the owner of the 'A' schedule property by virtue of a registered gift Deed duly executed by Prabir Kumar Nag genuinely. Inter alia, the said gift Deed was executed in favour of the defendant on 30.08.2019 and Prabir Kumar Nag expired on 09.09.2020. Inter alia, the said Gift Deed is a registered one and inter alia, there is no document to prove that Prabir Kumar Nag was of unsound mind. Inter alia, after being the owner of the 'A' schedule property the defendant got her name duly recorded in the L.R.R.O.R and inter alia, she has been residing in the 'A' schedule property along with the plaintiffs' as permissive possessor. After Prabir Kumar Nag's death on humanitarian ground the defendant permitted the plaintiffs to stay in the 'A' schedule suit property. However, inter alia, the defendant on and from 17.03.2021 and by notice dated 17.03.2021 to the plaintiff through her Ld. Advocate has revoked the said permission to the plaintiffs and has proposed the plaintiffs to vacate and deliver possession of the 'A' schedule property within 30 days from the date of the receipt of notice. Inter alia, plaintiffs just to save themselves from eviction through due process of law have filed this suit. Inter alia, the defendant has prayed for rejection of the petition for temporary injunction.

The plaintiffs filed rejoinder against the said W/O against the petition for temporary injunction in which the plaintiffs inter alia, denied the contents of the defendant's W/O against the petition for temporary injunction. Inter alia, the plaintiffs in their rejoinder inter alia, reiterated paragraph nos.01 to 9 of the

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petition for temporary injunction and 01 to 12 of the plaint. Inter alia, the plaintiffs also denied paragraph nos.11 and 12 of the said W/O. Inter alia, the plaintiffs have put the defendant to strict proof of their W/O as per their rejoinder.

Ld. Advocate for the defendant verbally moves the W/O against the petition for temporary injunction and verbally submits its contents and files a photocopy of ruling i.e. 2022 LiveLaw (SC) 299 and prays for rejecting the petition for temporary injunction.

Ld. Advocate for the plaintiffs verbally move the petition for temporary injunction and verbally submit the contents of the same and also verbally submit that there is a difference between the facts of the case contained in the photocopy of the ruling filed by the Ld. Advocate for the defendant and the plaintiffs' case as per the petition for temporary injunction. Ld. Advocate for the plaintiffs verbally pray for allowing the petition for temporary injunction.

Heard submissions of both sides.

Perused the petition for temporary injunction dated 13.09.2022, the W/O dated 09.01.2023 against it, the rejoinder dated 02.05.2023 against the W/O filed by the defendant against the petition for temporary injunction, the photocopy of ruling i.e. 2022 LiveLaw (SC) 299 filed by the Ld. Advocate for the defendant, the documents on record and the case record.

On perusal of the above it is found that there is already an order of ad interim injunction in force in the instant case record. As such the ruling placed by the Ld. Advocate for the defendant i.e. 2022 LiveLaw (SC) 299 is not applicable to the facts and circumstances of this case. On further perusal of the case record it is found that as against the document on record filed by the Ld. Advocate for the plaintiffs neither the Ld. Advocate for the defendant nor the Ld. Advocate for the plaintiffs filed the alleged gift Deed between Prabir Kumar Nag and the defendant. Thus, no new document other than the ones already on record have been filed by the defendant to remove the existing order of ad interim injunction. Therefore, this Court finds no reason to move away from the order of injunction in an ad interim form already in force in this suit. Due to the afore-stated reasons a prima facie case is found in favour of the plaintiffs hence, the balance of convenience and inconvenience lean in favour of the plaintiffs. In my judicial view the interest of justice would be served thereby eliminating the scope of multiplicity of proceedings if the ad interim order of injunction already in force is made absolute till the final disposal of this suit.

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Hence,

ORDERED

That the prayer for temporary injunction is allowed on contest.

The defendant namely Shikha Bhadra is restrained by way of ad interim injunction to alienate/mortgage the 'A' schedule property and from changing its nature and character till the final disposal of the suit.

The plaintiffs file a petition for extension of the ad interim order injunction.

Hd. Considered.

In view of the afore-stated order the petition for extension of the ad interim order of injunction is misconceived and stands rejected.

Fixing 11.12.2023 for framing of issues.

Dictated & Corrected by me

Civil Judge (Sr. Divn.), Burdwan

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