

Title Suit No.170 of 2023
Present : Smt. Payel Bagchi Banerjee
Civil Judge (Sr. Divn.)
3rd Court, Howrah.
J.O Code: WB01144

Order dated :20.09.2024

Today is fixed for passing Order.

Haziras have been filed on behalf of the plaintiffs and the defendants respectively.

An application under Section 148 read with Section 151 of the CPC, supported by affidavit, for extension of ad-interim Order of injunction dated 04.04.2023 has been filed today by the plaintiffs.

The case record is taken up for passing Order.

Perused the plaint, the application under Order 39 Rule 1 and 2 read with Section 151 of the CPC dated 04.04.2023 filed by the plaintiffs, written objection dated 12.06.2023 filed on behalf of the defendant Nos.1 and 2, Counter-Affidavit dated 12.09.2023 filed by the plaintiffs, documents filed on behalf of both sides and other materials available on record.

Considered.

It appears from the plaint and the application that the Schedule "C" mentioned suit property is an undivided property and both the plaintiffs and the defendants are co-sharers in respect of the same. The plaintiffs, through plaintiff No.3 on 01.04.2023 asked the defendant Nos.1 and 2 for effecting amicable partition of the Schedule "C" mentioned suit property by metes and bounds according to the respective shares but, the defendant Nos.1 and 2 not only flatly refused to make such partition but also openly and violently denied the title of the plaintiffs over the Schedule "C" mentioned suit property. The said defendants also made attempts to raise new construction on the entire Schedule "C" mentioned suit property and also tried to change the nature and character of the same. The plaintiffs have thus, filed the present application and prayed for relief.

The defendant Nos.1 and 2, on the other hand, contested the temporary injunction application by filing their written

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objection, thereby denying the allegations made by the plaintiffs in their application for temporary injunction. The defendant Nos.1 and 2 have categorically stated that they have purchased the suit property by virtue of a Registered Sale Deed being No.051301868 for the year 2023 dated 06.03.2023 from one Biren Hati and since then they have been in possession of the suit property. The defendants have also mutated their names in the ROR and have been paying Khajna and Panchayat Tax in respect of the suit property. Originally the property belonged to the predecessor of Gunadhar Dhali and after the death of the predecessor, said Gunadhar Dhali became the exclusive and recorded owner in respect of the suit property. Gunadhar Dhali died intestate and after the demise of Gunadhar Dhali, his legal heirs became the joint absolute owners, occupiers and possessors in respect of the suit property. The legal heirs of Gunadhar Dhali transferred their right, title and interest in respect of the suit property in favour of Biren Hati by virtue of a Registered Deed of Sale being No.050110913 for the year 2015 dated 27.11.2015. After a long period on and from the year 2015 to 2023 the absolute owners were/are in possession of the suit property and none of the persons including the plaintiffs made any obstruction and/or create any disturbance towards the previous and present owners of the said property over the suit property in any manner. The husband of the plaintiff No.1 and the father of the plaintiff Nos.2 and 3 were physically present and duly signed over the said Deed of Conveyance as a witness in presence of other witnesses. Therefore, the plaintiffs have got every knowledge in respect of the said Deed which was duly executed at the house of its vendors through Commission Work by the authority concerned which has been totally suppressed by the plaintiffs in this suit. The plaintiffs have

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never been in possession of the suit property and they are illegally demanding the share of the defendants which absolutely belong to the defendant Nos.1 and 2. The plaintiffs have no right, title and interest over the suit property in any manner whatsoever. The defendant Nos.1 and 2 have prayed for dismissal of the temporary injunction application filed by the plaintiffs with cost.

It appears from the written objection that the defendant Nos.1 and 2 have stated that the suit property originally belonged to the predecessor of Gunadhar Dhali and after the death of the predecessor, said Gunadhar Dhali became the exclusive and sole recorded owner in respect of the suit property. Subsequently, the legal heirs of Gunadhar Dhali transferred their right, title and interest over the suit property in favour of Biren Hati by virtue of a Registered Deed of Sale being No.050110913 for the year 2015 dated 27.11.2015 and the said Biren Hati subsequently transferred the suit property in favour of the present defendants by virtue of a registered Deed of Sale being No.051301868 for the year 2023 dated 06.03.2023 by metes and bounds. It has also been stated by the defendant Nos.1 and 2 that the entire property measuring 8 decimals was well amicably settled by and between all the co-sharers and legal heirs and successors who were exclusive owners and occupiers and possessors as per the Record of Right. From the copy of the Registered Deed of Sale being No.050110913 for the year 2015 dated 27.11.2015 it is not revealing that the said Gunadhar Dhali was the exclusive owner of the suit property and it is also not revealing that the suit property has been partitioned amongst all the co-sharers by metes and bounds. Whereas, from the plaint as well as from the injunction application it prima facie appears that the suit property was originally belonged to one Annada Prasad Dhali

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who died in the year 1970 leaving behind his three daughters namely, Kalo Bala @Kalidasi Sardar, Brajabala Bachar, Jurabala @ Juramani Gayen and and one son namely, Gunadhar Dhali as his legal heirs and successors. The defendant Nos.1 and 2 claiming their absolute right, title and interest over the suit property could not prima facie establish that the suit property was partitioned by metes and bounds amongst all the co-sharers or that the property purchased by them was actually the well-demarcated property of Gunadhar Dhali.

Considering the claim and the counter-claim of the respective parties, this Court is of the considered view that the Schedule "C" mentioned suit property is required to be preserved in its status quo till disposal of the suit.

Hence, it is

ORDERED

that the application under Order 39 Rule 1 and 2 read with Section 151 of the CPC dated 04.04.2023 filed by the plaintiffs is hereby allowed on contest against the defendant Nos.1 and 2 but, without any Order as to costs.

Both the plaintiffs and the defendant No.1 and 2 are hereby directed to maintain status quo in respect of the nature, character and possession of the Schedule "C" mentioned suit property till disposal of the suit.

The Order dated 04.04.2023 (Later) is hereby made absolute till disposal of the suit.

The application for extension of the ad-interim Order of injunction stands disposed of accordingly.

The temporary injunction application dated 04.04.2023 is thus, disposed of. Plaintiffs are hereby directed to take fresh steps upon the rest defendants positively by the date fixed.

Fix **05.12.2024** for S/R and A/D.

D/C