

**T.S.172 of 2022**  
**CNR No.WBWMOK000246-2022**  
**J.O.Code WB01513**

**Order No. 14 dated 22-05-2024.**

Both parties has filed hazira through their Ld. Advocates.

The case record is taken up for hearing of the injunction petition.

The case for the plaintiff is that, the properties mentioned in the schedule of the Plaintiff was of one Rajendranath Bhanja. And the plaintiff, Nishikanta Bhanja is son of Rajendranath Bhanja. The plaintiff has two wives. The first wife name was Archana and out of the wedlock their daughter named as Pratima Kandar, who is main defendant No.1 in this suit. The second wife named as Gita Bhanja. The plaintiff stated that a case U/S-125 of Cr.P.C was filed against the plaintiff by wife Archana and after the order of the maintenance case, the father of the plaintiff, Rajendranath Bhanja gave a gift deed in favour of Archana being No.10758 of 1987 in lieu of maintenance. Ld. Advocate for the plaintiff contends that the gift which was given to the mother of plaintiff was a conditional gift and that gift was never accepted. After the maintenance case the plaintiff and her mother went to her maternal house. The plaintiff further states that since the condition of the gift failed hence deed No.3568 of 1998 which was executed by Rajendranath Bhanja. Since acceptance of gift was not done by defendant No.1 nor her mother, no possession ever had in favour of her. Since the gift is not accepted further sale could happened. The record in the name of defendant no 1 is erroneous. Thus, the plaintiff have a prima-facie case and prays for injunction.

On the other hand the defendant No.1 agrees that she is daughter of plaintiff and also admits about the maintenance case which had happened favouring her mother. After the dispute between her mother and father, her mother went to maternal home as during those days she felt insecure to stay with her in-laws and hence she filed Section-125 Cr.P.C of Maintenance order which came in her favour and the same was applied for execution. Hence, her grand father gifted the property to her mother with respect to the maintenance case. The Ld. Advocate for the plaintiff denies that the gift deed is conditional or it was not accepted by my mother. The plaintiff is legal heir of Rajendranath Bhanja. The defendant states that the deed No.10758 of 1987 in favour of my mother is valid and has been recorded in name of my mother. This proves that I had been in possession after I accepted the gift.

Heard both sides. Perused the documents like the sale deeds and LR ROR etc from both sides.

As this is hearing of temporary injunction, the Court would not go on to prove that the details of the Gift deed. Though plaintiff has not challenged directly the Gift deed no 10758, but claimed the property mentioned in that deed. Ld Advocates from both the sides argued about the validity of the Gift Deed which involved a lot of mixed questions of Law.

Whether the Gift was conditional and the Defendant failed to fulfill the condition or such condition was not valid or not as per law would be decided after taking evidence at the trial. At this moment only Prima facie case has to be found out. Here the Defendant no 1 has the gift deed in her favor which ensures the title of the deed. And she also has the record in her name which is a document of possession. The Ld. Advocate for the Plaintiff also says that the Gift is not accepted hence not valid which is also matter to be decided at the trial. The main issue here has to be solved as “Whether the gift deed no 10758 is valid?”. The defendant has

stated that Schedule “Ka” “Kha” and “Ga” had been received out of Gift deed in favor of other defendants where some of the areas have been covered under the Gift deed received by the Defendant No 1. One fact has come up wherein both parties agrees that after the maintenance order under sec 125 of Crpc, the Gift deed was made. Hence here as of now the property or lands mentioned in the deed no 10758 has to be saved. At this moment when the Gift deed was made for maintenance in favour of the Defendant no 1 and her mother, further transfer cannot happen under clause (dd) of sec 6 of Transfer of Property Act, 1885. Thus the property needs to be saved in order to avoid further multiplicity of proceedings although balance of inconvenience is not in favour of the plaintiff. If temporary injunction is allowed to plaintiff, the whole suit would become infructuous. On perusal of the plaint and injunction application it appears that plaintiff has a prima facie case. As such this court is opinion of that in the present context, in order to protect the suit property from further transactions, an order of **status quo** would be appropriate in the given situation.

Hence, it is

### **ORDERED**

that both parties are directed to maintain status quo with respect to possession and nature and character in the suit property as exist today till disposal of the suit.

No third party interest to be created by any of the parties.

The temporary injunction is disposed off on contest but without cost.

There is no order as to cost.

To 26.06.2024 for framing of issues. Parties are at liberty to file their suggested issues.

Civil Judge(Jr. Divn.)

Karagpur, Paschim Medinipore

Civil Judge(Jr. Divn.)

Kharagpur Paschim Medinipore