



Special Civil Suit No. 121/2023

Chaganlal Kanhayalal Roy vs Kunal Chaganlal Roy and ors.

(Appearance for plaintiff Ld. Advocate Shri. M. D. Paliwal
Appearance for defendants Ld. Advocate Shri. S. S. Pardeshi)

ORDER BELOW EXH.5

(Passed on this 02nd Day of February, 2024)

This is an application by plaintiff under Order 39 Rule 1(a) and (c) of Code of Civil Procedure for an injunction restraining defendant No.2 from obstructing the peaceful possession of the plaintiff over the suit property as described in the plaint and from alienating the suit property to third party, till the decision of the suit.

2. It is the case of the plaintiff that, he is an agriculturist. The defendant No.1 is his son. The defendant No.2 is his ex-daughter-in-law and ex-wife of defendant No.1.

3. It is further case of the plaintiff that marriage of defendant No.1 and 2 was solemnized on 12.12.2013 as per customs prevailed in their community. However, due to some disputes and differences, defendant No.1 and 2 had taken divorce.

4. It is further case of the plaintiff that defendant No.2 was used to harass defendant No.1 and used to say that her marriage was against her will.

5. It is further case of the plaintiff that on 06.06.2002, the plaintiff had purchased suit property in the name of defendant No.1 for the valuable consideration of Rs.40,000/- out of his own income and he

is in possession of suit property since the purchase.

6. It is further case of the plaintiff that he purchased another property bearing Survey No.102 in the name of defendant No.1 on 28.02.2002 out of his own income and he is in possession of that land.

7. It is further case of the plaintiff that on 07.04.2019, he was in need of 7/12 extract of suit property. Therefore, he obtained 7/12 extract of suit property and he came to know that there was no name of defendant No.1, but there was name of defendant No.2. Thereafter, he inquired and he got information that defendant No.1 had executed alleged gift deed in favour of defendant No.2.

8. It is further case of the plaintiff that thereafter, he inquired to the defendant No.1. The defendant No.1 told him that he was under mental stress due to harassment of defendant No.2 and defendant No.2 had pressurized him to take mutual divorce and execute gift deed of suit property in her name.

9. It is further case of the plaintiff that defendant No.1 has no right to alienate the suit property since suit property was purchased by him by his own income in the name of defendant No.1.

10. It is further case of the plaintiff that on the basis of gift deed, defendant No.2 may alienate suit property to third party and dispossess him from the suit property, therefore, defendant No. 2 be restrained from alienating the suit property to third party and from disturbing his possession over the suit property till the decision of suit.

11. On the other hand, the defendant No. 2 has filed her say below Exh.21. The defendant No.2 has denied all allegations of the plaintiff. The defendant No.2 specifically contended that the plaintiff has no concerned with the suit property, therefore, he has no locus standi to institute present suit. As per the provisions of Hindu Succession Act, she is absolute owner of suit property, as she got suit property in lieu of maintenance. Suit is also not maintainable as per the provisions of Section 4 of Benami Transaction Act, 1988.

12. It is further case of defendant No.2 that defendant No.1 and she had decided to take divorce by mutual consent and in lieu of maintenance, defendant No.1 had agreed to execute the gift deed of suit property to her. Therefore, she has become absolute owner of the suit property, therefore, present application be rejected.

13. Considering the nature of controversy, the following points arise for my determination and I have recorded my findings thereon with reasons as follows :-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether there is prima facie case in favour of Plaintiff ?	In the Negative.
2.	Whether there is balance of convenience in favour of plaintiff ?	In the Negative.
3.	Who will suffer irreparable injury, if injunction is granted ?	Defendant No.2.
4.	What order ?	Application is rejected.

REASONS

AS TO POINT NO. 1 TO 3 :-

14. All points are interconnected to each other, therefore, they are required to be taken up together. In order to seek interim injunction, plaintiff must show that he has prima facie case and balance of convenience in his favour. In addition to this, plaintiff must further show what hardship would be caused to him if injunction is not granted.

15. It is contention of plaintiff that he is real owner of suit property and he purchased suit property by his own income in the name of defendant No.1 and defendant No. 1 had no right to execute gift deed in favour of defendant No.2. On the other hand, it is contention of defendant No.2 that she is absolute owner of suit property as she received suit property in lieu of maintenance.

16. Heard both sides. In order to decide real controversy between the parties, documents being filed by both sides needs to be considered, at this stage. The plaintiff has filed xerox copy of gift deed on record. Upon perusal of contents of gift deed, it is seen that it is registered document, being executed by defendant No.1 in favour of defendant No.2 in lieu of permanent maintenance. The gift deed has further recitals that possession of the property had been handed over to the defendant No.2, at that time. The contents of gift deed clearly show that defendant No.2 is in possession of suit property at this stage. The 7/12 extract of suit property also shows that defendant No. 2 is in possession of suit property at this stage. On the other hand, plaintiff has not produced any document on record so as to

show his possession over the suit property. The plaintiff has filed some affidavits of adjacent land holders on record so as to show his possession over the suit property. However, as there is a registered gift deed and 7/12 extract of suit property on record containing fact that the suit property is in possession of defendant No.2, the affidavits of adjacent land holders cannot be taken into consideration, at this stage, without evidence. Thus, I am inclined to conclude that defendant No. 2 is in possession of the suit property at this stage.

17. Moreover, in view of Section 14 of Hindu Succession Act, defendant No.2 has become an absolute owner and possessor of the suit property. Therefore, the contention of the plaintiff cannot be considered at this stage without evidence.

18. So also, in view of Section 4 of Benami Transaction Act, 1988, it is prima facie appeared that present suit is not maintainable against the defendant No.2 or against suit property. Therefore, in my opinion, the contention being raised by the plaintiff are purely question of trial and same cannot be considered at this stage.

19. In view of above discussion, I have come to the conclusion that the plaintiff has no prima facie case and balance of convenience in his favour at this stage. If an interim relief is not granted to the plaintiff, he would not suffer irreparable loss or injury at this stage. However, if an interim relief is granted to the plaintiff, defendant No.2 would suffer irreparable loss and injury at this stage and same cannot be compensated later on. Therefore, an interest of defendant No.2 is required to be protected at this stage. Hence, I answer all the points in favour of defendant No.2.

AS TO POINT NO. 4 :-

20. In view of findings to point No. 1 to 3, the application is deserved to be rejected. Hence, I proceed to pass following order.

ORDER

1.	Application is rejected.
2.	Cost in cause.

Nagpur.
Dated : 02.02.2024.

(S. M. Sarode)
Civil Judge Senior Division,
Ramtek.

CERTIFICATE

I affirm that, the contents of this P.D.F. file of order are word to word, as per original order.

Name of Stenographer : Sau. V. S. Boharapi, Stenographer (Grade II)