

T.S. No. 526 of 2022

Order No. 7 Dated 03-05-2023

Today is fixed for injunction hearing, acceptance of W/S and counterclaim and filing of amended plaint by the plaintiff.

Both the plaintiff and the defendants filed their memo of appearance through their Ld. Advocate.

Ld. Counsel for the plaintiff and the defendants are present.

The plaintiff has filed amended plaint. Copy is served. The plaintiff has also filed a W/O to the W/S and the counterclaim filed by the defendants along with an application challenging the maintainability of the counterclaim under Order 7 Rule 11 CPC read with Section 151 CPC. Copy is served.

The defendant has filed two applications under Section 151 CPC one praying for permission to obtain new electric connection and the other praying for permission for use the stair and roof of the schedule A property. Copy is served.

Heard the plaintiff and the defendant in connection with the injunction application under Order 39 Rule 1 and 2 CPC.

The record is taken up for passing order.

Application of the plaintiff under Order 39 Rule 1 and 2 CPC.

This is a suit for eviction and recovery of khas possession and permanent injunction.

The plaintiff's case in a nutshell is that the suit property is one storied building consisting three rooms constructed in a plot of land measuring 1 cottah 6 chittak 18 sft. The plaintiff purchased the suit property from the mother namely Laxmi Mahali and the brother namely Jayram Mahali of the defendant No. 1 through a registered deed of conveyance being No. 150611711 dated 10.12.2015 for a valuable consideration. The plaintiff took possession of the property after purchase and got his name mutated in the assessment register of Dum Dum Municipality. He got sanction of plan from Dum Dum Municipality and constructed one storied building on the said plot of land described under schedule A.

It is pointed by the plaintiff that the defendant No. 1 was making obstruction to his mother Laxmi Mahali and his brother

Jayram Mahali at the time of registration of the aforementioned sale deed. However, Laxmi Mahali and Jayram Mahali executed and registered the aforementioned sale deed in favour of the plaintiff under a mutual settlement.

The plaintiff alleges that on 23.01.2022 the defendant entered the suit property and tried to take forcible possession of the two room in the ground floor of the suit building. The defendants are intentionally disturbing the peaceful possession of the plaintiff and is in forceful occupation of two rooms of the ground floor of the suit building. Thus, the plaintiff has lodged complaint before Dum Dum PS and filed application under Sec. 144 (2) CrPC in MP case No. 428/2022.

According to the plaintiff, the defendants are trespasser who are continuing illegal possession of two rooms described under schedule B. The plaintiff requested the defendants to vacate the suit property described in schedule B. the defendants took time to vacate the suit property on various pretext. Thus, the plaintiff issued notice to the defendants dated 21.04.2022 in order to vacate the suit property described under schedule B. However, the defendants refused to quit and vacate the suit property described in schedule B and told the plaintiff that they shall make construction for addition and alternation of rooms in schedule B due to shortage of accommodation.

Thus, the plaintiff has prayed for an injunction order restraining the defendants from changing the nature and character of schedule A and B property or causing any obstruction to the peaceful enjoyment of the suit by the plaintiff or part with possession of the suit property in favour of any third party.

Written Objection filed by the defendant

The defendants submit that the schedule A property was purchased by Laxmi Mahali and her son Jayram Mahali, the mother and the brother of the defendant No. 1 by virtue of a sale deed No. 5100 dated 07.09.2000 from Sukla Chatterjee and they were residing schedule A property by erecting a temporary structure.

It is the defendants' case that a deed of conveyance was executed and registered on 10.12.2015 by Laxmi Mahali and

Jayram Mahali, the mother and brother of the defendant No. 1 transferring the suit property in favour of the plaintiff for a valuable consideration. However, the defendants allege that no consideration amount was paid by the plaintiff subsequent to the transfer.

In the backdrop, it is described by the defendants that the plaintiff had given proposal to Laxmi Mahali and her sons Jayram Mahali and Sanjoy Mahali to transfer the suit property to the plaintiff for a consideration amount of Rs.10,00,000/-. And in lieu of that the plaintiff after constructing pucca structure over the suit property could allow the Mahali family to reside in two rooms, toilet and bathroom in the ground floor of the building forever. It was suggested by the plaintiff that in order to make pucca construction over schedule A he needs to procure loan and for that purpose the schedule A need to be transferred in his name. Thus, the deed of conveyance was executed and registered on 10.12.2015. It is also pointed out here that prior to the execution of deed of conveyance, a deed of declaration was executed between the defendant No.1 and the plaintiff on 09.09.2015 in which the aforementioned conditions were laid down.

It is further the defendants' case that the mother and the brother of the defendant No. 1 transferred schedule A property in favour of the plaintiff for valuable consideration on the basis of mutual settlement dated 09.09.2015 but no consideration price was paid by the plaintiff subsequent to the transfer. Though it is mentioned in the deed of conveyance dated 10.12.2015 that Rs.10,00,000/- has been received as consideration amount in different dates by cash and cheque but the actual fact is that no amount has been paid to the defendants. The plaintiff had issued cheques being No. 913542 and 913543 dated 22.012.2015 each amounting to Rs.1,00,000/-. However the said cheques were dishonored by the bank due to insufficient fund.

Now, the defendants submit that they are in possession of the schedule B property to the knowledge and consent of the plaintiff and in accordance to the terms and condition entered by the plaintiff and the defendant No.1. While in possession of schedule B property, the defendants requested the plaintiff to complete the unfinished work of the two rooms but the plaintiff expressed his financial insufficiency in doing so. Thus, the defendant completed

the unfinished work of the two rooms out of their own fund and started residing there.

Thus, the defendants submit that they are not trespasser in connection with the suit property but are in possession of it as per the agreement by the plaintiff and the defendant No. 1. Thus, the defendants pray for rejection of the plaintiff's application for temporary injunction.

C O N C L U S I O N S

This Court is now considering an application under Order 39 Rule 1 and 2 CPC in which the plaintiffs have prayed for temporary injunction restraining the defendant from changing the nature and character of the suit property or selling and alienating the same.

It is the well settled principle of law that while considering an application for temporary injunction, the Court has to look into three aspects namely, "prima facie case", "balance of convenience" and "irreparable injury".

The existence of prima facie right and infraction of the right to enjoyment is the foremost condition for grant of temporary injunction. Now, prima facie case is a substantial question raised by the litigating parties which needs investigation and a decision on merits. In this context, it is pleaded by the plaintiff that he purchased the suit land from the original owners Laxmi Mahali and Jayram Mahali through a registered deed of sale being No. 150611711 dated 10.12.2015. Thereafter, he constructed one storied building over the suit land out of his own fund and is in possession of the suit property.

It is contended by the defendants that a declaration was entered by the plaintiff and the defendant No. 1 on 09.09.2015 prior to execution of the deed of conveyance on 10.12.2020. According to the said declaration, the plaintiff shall purchase the suit property from the defendant against consideration price and in lieu of which the plaintiff after erecting a pucca structure will allow the defendants to reside in the ground floor. It is further contended that the defendants were delivered possession of the schedule property by the plaintiff in terms of declaration dated

09.09.2015. The defendants their right over the suit property on the basis of the aforementioned declaration. Thus, it appears that there are questions raised by the parties to the suit which are bonafide and are required to be adjudicated after taking evidence. Hence, there are issued to be decided by this Court.

Furthermore, the plaintiff is required to establish that by non-interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and they need protection from the consequences. Thus, it remains for the Court to determine whether the defendants are interfering with the possession of the plaintiff and whether if injuncted it would cause any hardship to the defendants.

Here it is to be found that the plaintiff averred that he is the sole owner of the suit property and the defendants are trespassers who are forcefully occupying the suit property. But, the defendants are claiming that they were handed over possession by the plaintiff on the basis of declaration. There is no question of any force being imposed upon the plaintiff to continue with possession over the suit property. No matter, whatever be the allegation raised by the plaintiff regarding the status of the defendants; it is well established that even a trespasser cannot be evicted from the suit property without the due process of law.

The plaintiff also apprehends that the defendants shall undertake construction work and make addition and alternation of the suit property due to their shortage of accommodation. It appears from the W/O filed by the defendants that they have indeed make some construction work in the suit property to complete the unfinished rooms so that they may reside there.

Thus, it appears prima facie that there are every chances of the suit property being altered or wasted at the instance of the defendants. If an order of injunction is not passed, then irreparable injury would be caused to the plaintiff as the nature and character of the suit property would change completely frustrating the subject matter of the suit.

There is urgency depicted by the plaintiffs that if temporary injunction is not allowed the suit property may be altered leading to multiplicity of proceedings. Thus, after weighing the competing possibilities or likelihood of injury, this Court considers that pending the suit, the subject matter should be maintained in status quo.

Hence it is

O R D E R E D

that the prayer of the plaintiff / petitioner for an order of temporary is allowed at this stage.

Both the petitioner / plaintiff and the OPs / defendants are directed to maintain status quo with respect to the nature, character and possession of the schedule property till disposal of this suit.

Both the petitioner / plaintiff and the OPs / defendants are directed not to alienate the suit property to any third party till disposal of this suit.

Fixing **08-05-2023** for acceptance of counterclaim and hearing of the two applications filed by the defendants under Section 151 CPC and hearing of the application under Order 7 Rule 11 CPC filed by the plaintiff.

Civil Judge (Sr Div), 2nd Court, Barasat
JO Code WB 01009