

T.S. 1033/2022

WBNP04-001257-2022

Order no : 12

Dated: 21.06.2023

Today is fixed for hearing of Petition u/o 39 Rule 4 of CPC as Last Chance. The Ld. Lawyers on behalf of both sides are present. The petition is taken up for hearing.

Heard the ld. Advocates on behalf of both the parties in full.

The defendants have filed an application under Order 39 Rule 4 read with Section 151 of the Code of Civil Procedure for vacating/ rescinding/ and/or setting aside/ modifying and/or recalling of the ex-parte ad-interim order of injunction dated 29-09-2022 .

The facts of the application of the defendants in a nutshell is that, the plaintiffs by suppressing all materials facts and without serving notice and without praying for dispensing with the service of notice of injunction on the defendant no. 1, moved the application for injunction and upon misleading this Ld. Court, succeeded to obtain the ex-parte ad-interim order of injunction on 29-09-2022. The defendants also stated that as the description of the schedule property is vague, un-ascertainable and the boundary as mentioned in the schedule of the plaint as well as injunction petition is also vague. So, no injunction can be granted over the vague schedule suit property .

The defendant no.1 purchased 03 decimals out of 04 decimals of land of dag no. 327 and thereafter he also purchased an area of more or less 1.25 decimals of land in dag no. 328 from the legal heirs and successors of the original landlord, late Profulla Kr. Bosu. After the demise of said Profulla Kr. Bosu his only son, Dilip Kr. Bosu also died leaving behind his wife and two sons and two daughters, who by inheritance became the owner of the aforesaid property in dag no. 328. While said legal heirs and successors had been possessing and enjoying the said property, they transferred the same in favour of the defendant no.1 by virtue of Kobala Deed being no. 13678/2012. The defendant no 1 further submitted that, the plaintiffs knowing fully well about the said ownership of the defendant no.1 with specific demarcation have filed this false suit and also obtained an order of injunction which is immediately required to be vacated, otherwise the defendant no.1 being rightful owner will be highly prejudiced and also will suffer irreparable loss and injury which can not be compensated by money value.

Originally one Aziza Khatun was the absolute owner of the suit property who had purchased the land from her husband i.e Kazi Jaynal

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Abedin, by way of registered Deed of Kobala being Deed no. 3605 dated 19-12-1974. But such Dilip Kr. Bosu, who happens to be the son of such Profulla Kr. Bosu along with one Haradhan Dey and one Sk. Nur Mohammad on 10-01-2003 forcibly entered into the said suit land by dispossessing the said Aziza Khatun therefrom and started their respective business there. Accordingly, she was compelled to file a Title suit before the Ld. Civil Judge (Sr. Divn.), 1st Court at Barasat praying for a decree for recovery of possession against the three persons but due to need of money, the said Aziza Khatun during the pendency of the said suit, transferred her property i.e. an area of 03 decimals of land in dag no. 327 in favour of the present defendant no.1 by virtue of registered deed no. 04834 dated 26-05-2006 and delivered possession in his favour.

Accordingly the defendant no.1 entered into the said suit in place of said Aziza Khatun. In that suit a local investigation was conducted and it was revealed that the said shop rooms were lying and situated within dag no. 327 and the land of the said Profulla Kr. Bosu of Dag no. 328 is situated adjacent eastern side of Dag no. 327. From the said report, it can be said that the Mouza Maps were erroneous and the C.S.R.O.R. as well as R.S.R.O.R. were correct in respect of dag no. 327, area of 04 decimals of land out of which the defendant no.1 is the owner of 03 decimal of land and he has been possessing and enjoying the same since his purchase. Moreover, the said Dilip Kr. Bosu and others who happened to be the defendants of that suit, came to understand that they have no right, title interest over the said three shop rooms of dag no. 327, they settled the matter with the present defendant no.1 and surrendered the said shop rooms in dag no. 327 in favour of the defendant no.1 herein. Further, the legal heirs and successors of said Dilip Kr. Bosu, namely Shyamali Bosu, Debabrata Bosu, Subrata Bosu, Papiya Dey and Krishna Mallick transferred their right, title interest in respect of their property measuring 1.25 decimals more or less, in dag no. 328 in favour of the defendant no.1 herein and delivered peaceful possession in his favour. Thus, the name of the defendant no.1 has been duly recorded in the present L.R.R.O.R. in respect of said two dags being 327 and 328 in Khatian nos. 1612 and 2293 respectively. In addition to this, the defendant no.1 during his peaceful possession in respect of aforesaid property measuring an area more or less 04 decimals of land applied before the Municipal Authority for sanctioning building plan and after due enquiry as well as scrutiny, the

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concerned Municipal authority, within the knowledge of the plaintiffs and others, sanctioned such building plan in favour of the defendant no.1.

Therefore, the plaintiffs have no right, title interest in respect of the property in question and they have filed the instant false suit against the defendant no. 1 when his construction work of the building, up to the roof level and the centering as well as the iron rod had been completed. Also, for such impugned order of injunction of this Ld. Court, all the building materials were getting damaged and the defendant no.1 had been facing severe monetary loss and with huge mental agony. Hence, this application.

The opposite party i.e the plaintiffs filed a written objection against the petition under Order 39 Rule 4 read with Section 151 of the Code of Civil Procedure by the defendant no 1 where it is stated that, at the time of investigation work it was found that the Mouza Maps were erroneous in respect of dag no. 327 (bottom of paragraph i no. 6) but it did not disclose about the mode/manner of being erroneous. Further, the defendant stated that Aziza Khatun sold the northern portion with shop room in favour of Lutfunnessa Bibi. If so, the rest 03 decimals with 3 shop rooms of the said Aziza Khatun from which, she was dispossessed by such Dilip Kr. Basu, Haradhan Dey and Sk. Nur Mohammad on 10.01.2003, must be in the Southern portion/side of said dag no. 327.

The plaintiffs also objected that the alleged sanctioned plan dated 20.05.2022 shows the land area of 4.25 decimals comprising R.S. dag no. 327, L.R. Dag No. 1121/1315 and R.S. dag no. 328, L.R. Dag is not mentioned therein, showing the boundary of the site plan as: On the North - by Faruk Abdullah; On the South - by Dulal Paul; On the East - by Kazipara Bazar; On the West - by 20 ft. width Ekdil Shah Road (the facts remain that the Ekdil Shah Road is 30 ft. width). Such specific boundary did not disclose the number(s) of Dag and it even did not show the sign of demarcation line of dag no. 327 & 328. Moreover, after comparing of the 4 boundaries as referred in the petition by the defendants and in the plaint by the plaintiffs, it can be seen that there could not exist the land area of the defendant no. 1 comprising in dag no. 327, area of 03 dec. and in dag no. 328, an area of 01.25 decimals is not contiguous to each other. In-spite of that, the site plan of the sanctioned building plan showed that said two dags are contiguous to each other, which is very astonishing.

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Perused the instant application, written objection, plaint, and all the documents on record.

Further, It seems to be an admitted fact that there is a building being constructed by the defendant no. 1 over the suit property. The defendant no.1 has produced the title deed no. 04834 of 2006 and deed no. 13678 of 2012, which shows that the defendant no.1 acquired the title over the suit property by way of registered deed of sale from the original owners of the said suit land. In addition, the defendant no.1 has produced two L.R.R.O.R.s of dag nos. 1121 and 1121/1315 recorded in the name of defendant no. 1 and one Haran Chandra. It goes on to prove that the possession of the suit property is with the defendant no 1. The defendant no.1 has further submitted one khajna dakhila dated 30.10.14 for dag no. 328 and another dated 27.07.18 of dag no. 1121/1310, in respect of the suit property. Further, the defendant had submitted two govt. rent receipts of Barasat Municipality vide receipt no.1845 and 2970 respectively dated 14.08.2020 and 24.08.2021 in respect of the suit property. Finally, the defendant no.1 has produced the proposed two storied commercial building plan in the name of Sri Biswanath Saha i.e. Defendnat no.1 dated 20.05.22, approved by chairman of the Barasat Municipality. The defendant no 1 has also submitted five case references in support his petition. This Court has examined them with utmost respect.

The plaintiffs have submitted one plot information of LR dag no. 1121 (previously 328). In the said plot information it is shown that, in the remarks portion there is a mentioning of the plaintiff's name which is subject to the provisions of Section 14 U of the W.B.L.R. Act. But such document is yet to be proved by the concerned authority. Also, in said L.R. dag no. 1121 (previously 328), there is presence of khatian no. 2293 in the name of the Biswanath Saha who is the defendant no 1 of the instant suit. But it does not disclose any information in regard to the extent of the land that the plaintiffs possessed. However, it is a settled legal proposition that the entry of record of right neither vests the title nor divests the title, but it is only presumption of possession. They also submitted one objection and representation to several authorities dated 20.08.2022, 23.08.2022, 26.09.2022 regarding the disputes over the suit properties. Lastly, they submitted voter id card and aadhar card of 2 persons namely Sadak Ali and Samim Alam Gazi.

In Ramjas Foundation and Anr. vs. U.O.I. and Ors., Phooltas Harsco

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Rail Solutions Pvt. Ltd. vs. Components Pvt. Ltd. And Ors. 2016 (3) ICC 641 CAL and Khan Mohammad Khan and Ors. vs. Jam Mohammad Khan, 2015 (3) ICC 889 (CAL), the Hon'ble Apex Court of India as well as the Hon'ble Calcutta High Court has been pleased to speak about suppression of material facts and it's repercussion. But at this juncture, these three case laws are not applicable as the facts and the evidences as produced by the parties in this suit will have to be put to trial, in order to find out their veracity. Therefore it cannot be said with certainty whether the plaintiffs have suppressed material facts resulting in any repercussion to their case at this stage.

In ***Bans Ropan And Others vs Iird Addl. Dist. Judge, AIR 1993 ALLAHABAD 117***, the Hon'ble Allahabad High Court has been pleased to uphold that the decision of the Appellate Court which allowed the defendants to raise construction with undertaking that it would be demolished if their claims finally fails. In the present situation, the defendant's construction work of the building is up to the roof level and the centering as well as the iron rod has been completed. Therefore at this stage, rejecting the prayer of the defendant no. 1 in the instant petition will result in huge monetary loss of them. On the other hand, it goes without saying that if at a later stage the plaintiffs are able to proof a better title over the suit property the defendant will have to strike down the building.

Lastly in ***Sree Krishna Timber Co. Pvt. Ltd. vs. MGA International Pte Ltd. And Ors. 2010 (1) ICC***, the Hon'ble Calcutta High Court has been pleased to make the following observation in respect of the Order 39 Rules 3 and 4 :

i) once an order of injunction is passed, such injunction may be discharged or varied only on an application made by any party dissatisfied by such order.

ii) an exception to the above rule is when a party has obtained such order of injunction by making a false and misleading statement in the application in which such ex-parte order of injunction was granted.

iii) the Hon'ble first Appellate Court has not ought to have vacated the said order of injunction without the respondent no 3 filing an application or affidavit in support of its case and

iv) order passed by the Hon'ble First Court ought not to have been varied on oral submission but on proper evidence being placed before it as

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required under Order 39 Rule 4 of CPC.

In the present petition by the defendant no.1 has fulfilled all the above mentioned criteria as prescribed in respect of his petition. The defendant no.1 being dissatisfied with the earlier injunction order has presented his petition, supported with affidavit and relevant evidences which points that they are liable to get the previous order of injunction set aside and allow their petition.

Under these circumstances, it can be seen that the plaintiffs objected with regard to the dag no. of the suit property that it comprises of 3 decimals and 1.25 decimals (4.25 decimal) in two different Dag nos. i.e 327 and 328 (previously) which is now Dag no 1121 and have claimed the same to be erroneous. But in this regard, the plaintiffs did not take any steps to complain in respect of such dispute before the proper authority i.e the B.L.L.R.O. in the proper form. Neither the plaintiffs have submitted any title deed of the suit property in support of their claim nor any other piece of evidence to prove their claim. On the other hand, the defendant no. 1 has been able to prove his title over the suit property by dint of two sale deeds in his name being no .04834 of 2006 and deed no. 13678 of 2012, better than the plaintiffs. Furthermore, the plaintiffs have objected to the demarcation of the suit land and also raised a question regarding the chauhoddi (boundaries), R.S. R.O.R. and L.R.R.O.R. along with the sanctioned building plan by the concerned municipality but have failed to explain any proper reason behind such objections. Therefore, it is very much clear that all these facts are subject to trial. Besides this, the Court is of the view that balance of convenience and inconvenience tilts in favour of the defendants. Thus, this Court inclined to allow the instant application filed by the defendant no. 1 under order 39 rule 4 read with Section 151 of the Code of Civil Procedure.

Hence , it is

ORDERED

that the instant application filed by the defendants under order 39 rule 4 read with Section 151 of the Code of Civil Procedure is considered and allowed on contest. Accordingly order of ad interim injunction passed by this Court on 29.09.2022 in the form of status quo is hereby set aside.

The instant petition is thus disposed off, without any order as to costs.

Fix **18.12.2023** for hearing of injunction application.

D.C. by me.

Civil Judge (Jr. Divn.), 1st Court,
Barasat, North 24 Parganas
WB01471

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Barasat, North 24 Parganas