

T.S. 25 / 22 (Reg. No. 27 / 22)
Present : Smt. Jyotsna Roy (J. O. Code WB00933)

Order no. 12 dated 09.12.2022

Parties take step.

Record is taken up for passing order in connection with injunction petition filed by plaintiff on 05.02.2022.

Heard the Ld. Counsel of the plaintiff.

Perused the instant application where from it appears that the plaintiff is the joint owner having 1/8th undivided share in the suit property. It is the further contention of the plaintiff that the plaintiff has become the owner by way of inheritance. Unfortunately, defendant nos.1, 10, 12 and 13 never accepted this plaintiff as their co-sharers and tried to grab the entire property. Plaintiff requested for amicable partition of the suit property by metes and bounds. But the defendants specifically defendant nos.1,10, 12 and 13 refused to effect such amicable partition and moreover, defendant no.1 intend to sale out or grab the entire property. It is further case of the plaintiff by way of inheritance plaintiff became the absolute owner of his respective share in respect of suit property, but the above mentioned defendants tried to deprive the plaintiff for their rightful occupation, even more they did not like this plaintiff to enter into the suit property and also threatened this plaintiff over phone. That on 01.02.22 one phone call was received by the plaintiff from Pradhan, Akui 2

Gram Panchayat, Indas bearing notice dated 01.01.2022 who requested the plaintiff to attend a meeting on 11.02.2022 at 2 pm in the said Panchayat Office. Accordingly, the plaintiff and his son duly attended the said meeting, but above mentioned defendants manhandled the plaintiff and plaintiff somehow rescued themselves and by lodging written diary on 14.02.2022. Plaintiff again requested defendant on 14.03.2022 through Ld. Advocate's letter dated 14.03.2020 to effect amicable partition, but that also failed. Thus, this application of injunction.

Ld. Counsel for the plaintiff stated that though this court has been pleased to reject the prayer for ad-interim injunction against the said order dated 05.05.2022, plaintiff has preferred an appeal vide FMAT 255 of 2022 before the Hon'ble High Court, Calcutta, by which this court has been directed to take up the injunction matter afresh with an observation that there is prima-facie case directing the parties to maintain status quo regarding the ownership and possession of the suit property.

Subsequently, defendants appeared and they have filed written objection against the application for injunction from where it appears that the cause of action of the instant suit arose is a peace and parcel of cultivating land measuring about 3.97 acre pond and about 2.60 acre Danga Land measuring about 0.65 acre along with Bastu Vita, dwelling house measuring about 0.50 acre lying and situated at Mouza- Kharsi, Dag no. 1050/ 4579, 1089/1859, 2271, 2564, 2666, 2685, 2766, 2768, 3599, 3652, 1193, 2809, 2813, 2819, 1153, 762, 3001, 2805, 2796, 2797, 2798, 2801, 2806, 3128, 2787, 2794, 2804, 2825, 3132, 3151, 3155, 2667, 2763, 2807, 2802, 3130, 2605, 2881/3977, J.L. No.121.

It is the further case of the defendant that the suit property belongs to Chandi Charan Mitra and said Chandi Charan Mitra died in the year 1959 and his wife died in the year 1966 leaving behind four sons and four daughters. It is the further case of the defendant that said Chandi Charan Mitra did not make any partition of his property amongst his sons and daughters. After the demise of Chandi Charan Mitra, his third son Amiya Kumar Mitra, i.e., defendant no.1 and defendant no.12 and 13 looked after the entire suit property. Other sons of said Chandi Charan Mitra usually went out of their village for their livelihood and used to visit their native village and daughters of said Chandi Charan Mitra are married. Therefore, plaintiff became joint owner having 1/8th undivided

share in the suit property. That by way of inheritance, this plaintiff became the absolute owner of their respective shares in respect of the suit property.

From the written objection, it further appears that the plaintiff claiming him and also defendants as co-shares of the suit property so, no permanent injunction as prayed by him in the plaint is to be granted in respect of Ejmal property. So, plaintiff has no locus-standi to pray for any ad-interim or, temporary injunction restraining defendants from cultivating the agricultural land and also from pisciculture in the disputed pond and also from alienating of the suit property. It is further contention of the written objection that there are so many Bastughar belonging to the co-sharers, so that no co-sharer can seek any order of injunction against the other co-sharers in respect of the residential houses which are already in existence over and upon the suit property. It is further contention of the defendant that there is no specific allegation of the plaintiff in the plaint or in the injunction petition that the defendants are taking any attempt to transfer or alienate the suit property to any third party or they have taken any attempt to sale out bamboos, trees and other valuables standing in the suit property, even there is no allegation that these defendants are forcibly cultivating the agricultural land of the schedule of the plaint, so, without any such specific allegation, the plaintiff is not entitled to get any relief against the defendants.

It is pertinent to mention that the Hon'ble High Court, Calcutta has been pleased to direct the parties to maintain status-quo regarding ownership and possession of the suit property.

It is the further allegation of the defendant that the plaintiff on earlier occasion had transferred some portions of his share over the suit property to various persons and they are enjoying their respective portions of share. But they have not been made parties to the instant suit.

Ld. Counsel of the defendants filed several documents in support of their contentions, such as-

1. Xerox copies of live data as on 02.11.22 in respect of suit plot,
2. Xerox copy of declaration dated 22.09.2009 executed by Asit Baran Mitra in favour of Amiya Kumar Mitra,
3. Xerox copies of house building tax dated 28.03.2022 and 07.04.2022 in respect of holding nos. 706 and 705 of Akui-II Gram Panchayat in the names of Basanti Mitra and Amiya Kumar Mitra.

4. Xerox copy of L.R Khatian no. 77 of Mouza- Kharsi, J.L. No. 121, P.S. Indas, Dist. Bankura in the name of Amiya Mitra

5. Xerox copy of L.R Khatian no. 110 in the name of Asim Kumar Mitra of mouza- Kharsi, J.L. No.121, P.S. Indas, Dist.-Bankura.

6. Xerox copy of L.R Khatian no. 1853 in the name of Sukdeb Mitra of mouza- Kharsi, J.L. No.121, P.S. Indas, Dist.-Bankura.

7. Xerox copy of partition map prepared by Surveyor Sk. Ajfar Ali dated 23.06.2007.

Document no.2, i.e., xerox copy of declaration dated 22.09.2009 executed by Asit Baran Mitra in favour of Amiya Kumar Mitra though, it is not registered one, but it is their (defendant) specific case that since 22.09.2009 Asit Baran Mitra is out of the property. From the document as has been filed by the defendants, it is clear to this court that the plaintiff has filed this suit by making exaggeration of the fact. Ld. Counsel of the defendants filed one citation reported in FMAT no. 1083 of 2018 (CAN 8471 of 2018) Sajli Kishku vs. Talamoyee Kishku and others on 9 August, 2019.

This court has gone through the entire citation and considered that when the point has been taken that all the parties to this suit have not been made parties to the suit of partition, then this suit is not maintainable in the eye of law.

Ld. Counsel for the defendants filed another citation reported in F.M.A 1524 of 2015 (CAN 3431 of 2015, CAN 3432 of 2015) Sk. Riyasat Ali vs Sk. Safiuddin Ahamed & Ors on 25 June, 2015.

This court has gone through the citation and considered that the Hon'ble High Court, Calcutta has been pleased to observe the prima-facie case in F.M.A.T 255/ 2022 the instant matter, but at the stage when the defendants have made their appearance and filed the declaration dated 22.09.2009 made by Asit Baran Mitra, where from it appears that he has willingly and as per his own requirement made this declaration by which he has transferred his share of the property to his elder brother Amiya Kumar Mitra for a considerable amount of money. It further appears from the said declaration that he has taken the entire consideration amount. Considering the said declaration dated 22.09.2009, this court is of the humble opinion that the plaintiff while filing the instant application, has suppressed the factum of declaration to this court. Therefore, in terms of above noted F.M.A 1524 of 2015 (CAN 3431 of 2015, CAN 3432 of 2015) Sk. Riyasat Ali vs Sk. Safiuddin Ahamed & Ors on 25 June, 2015, as the

plaintiff seeking relief u/O 39 Rule 1 & 2 which is an equitable relief as the plaintiff has not come with clean hands, so the prayer for injunction is liable to be refused at this stage.

Moreover, the plaintiff has failed to prove -

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or, wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

Therefore, in terms of the F.M.A 1524 of 2015 (CAN 3431 of 2015, CAN 3432 of 2015) Sk. Riyasat Ali vs Sk. Safiuddin Ahamed & Ors on 25 June, 2015, plaintiff has not come to the court with clean hands. So, the prayer of the plaintiff, seeking relief u/O 39 Rule 1 and 2 is liable to be rejected for the interest of justice.

It is the further contention of the Ld. Counsel of the defendants that when one of the co-shares have transferred the portion of his share in the suit property, as such purchasers have automatically become co-sharers by virtue of purchase. Therefore, in the absence of those co-shares, the suit for partition cannot be held to be maintainable in the eye of law.

Thus, as per prayer of the Ld. Counsel of the defendants, the plaintiff is not entitled to get any relief by way of an order u/O 39 Rule 1 and 2 of CPC. Therefore, prayer for injunction stands rejected at this stage, but there should be status-quo in respect of the possession and ownership of the property.

Fixing 03.01.23 for framing of issue.

Dictated & Corrected by me

Civil Judge (Sr. Divn.), Bishnupur

Civil Judge (Sr. Divn.), Bishnupur