

T.S. - 338/24 CNR – WBCC0101588-2024

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 03

06.3.24

Today is fixed for hearing the injunction application u/o 39 Rules 1 and 2 read with section 151 CPC dtd 29.2.24.

Plaintiff and the defendant nos 1 and 2 file haziras. Defendant nos 1 and 2 file WO against the injunction application. Copy has been served. Objection has been raised. Let the same be kept with this record.

Heard the Ld. Advocates for both the sides at length. Perused the application supported by an affidavit.

In short, the case of the plaintiff is that he is the minor son of Pinaki Biswas (since deceased) who died intestate on 15.10.23. It is also his case that Pinaki Biswas (since deceased) during his lifetime entered into an agreement for sale on 20.7.12 with the defendant nos 3 to 6 to purchase the suit property as described in schedule to the said application at a consideration price of Rs. 5,50,000/-, which he had paid to the vendors, who issued money receipt on 19.7.14 acknowledging full payment of consideration money. The said Pinaki Biswas (since deceased) died on 15.10.23 leaving behind the defendant no 2 as his first wife, the defendant no 1 as the daughter of his first wife and the plaintiff out of his second marriage with the mother of the plaintiff and accordingly the plaintiff has acquired undivided 1/3rd share in all the properties left behind by the said Pinaki Biswas (since deceased). In that perspective though the requisite of Deed of Conveyance was required to be executed and registered in favour of all the heirs and legal representatives of the said Pinaki Biswas (since deceased), but the defendant no 1 got the suit property registered in her name from the vendors on 6.2.24 despite objection raised by the plaintiff. It is contended by the plaintiff that the defendant no 1 is now trying to transfer the suit property in favour of 3rd parties with a view to deprive the plaintiff from his legitimate share therein. For all these reasons the plaintiff, by filing this suit, has come up with the instant application.

The defendant nos 1 and 2 have resisted and contested the said application by filing a WO denying all the material allegations contained therein. The specific case of those defendants is that the defendant no 1 having purchased the suit property from the vendors by a registered Deed of Conveyance dtd 5.2..24 for valuable consideration, she is the sole and absolute owner thereof. It is also their case that the said Pinaki Biswas (since deceased) during his lifetime got married with the defendant no 2 and out of their wedlock the defendant no 1 was borne as his legitimate daughter. Accordingly the defendant nos 1 and 2 have prayed for rejection of the prayer of the plaintiff on the ground that the plaintiff has no prima facie case.

From the respective submissions of the Ld. Advocates for both the parties as well as from the contents of the injunction application and WO thereto together with the copies of documents relied upon it appears to be the admitted position that the defendant no 2 is the lawful married wife of the said Pinaki Biswas (since deceased) and the defendant no 1 happens to be their legitimate daughter. It is also evident that a registered Deed of Conveyance has been executed

towards sale of the suit property by the defendant nos 3 to 6 in favour of defendant no 1 on 5.2.24. Though the defendant nos 1 and 2 have denied the existence of any agreement for sale executed by the vendors in favour of the said Pinaki Biswas (since deceased) but the registered deed of conveyance contains reflection of existence of such agreement for sale. Though the copy of Adhar card of the plaintiff contains the name of the said Pinaki Biswas (since deceased) as his father but whether the plaintiff is really the son of the said Pinaki Biswas (since deceased) or not is a matter to be decided on conclusion of trial on the basis of evidence to be led by both the parties. Even if it is taken to be granted that the plaintiff is the son of the said Pinaki Biswas (since deceased), it is obvious that he is his illegitimate child. From the copy of money receipt it appears that a sum of Rs. 5,50,000/- was received by the vendors from the said Pinaki Biswas (since deceased) on 19.7.14 by way of consideration price as mentioned in the agreement for sale of the suit property in his favour. However there is no dispute between the parties that despite execution of the said agreement for sale the requisite deed of conveyance was not registered in the name of the said Pinaki Biswas (since deceased) as he died on 15.10.23 while the registered deed of conveyance in respect of the suit property was executed in favour of the defendant no 1 on 5.2.24. However from the memo of consideration as appearing in the copy of the registered deed of conveyance it is evident that the total consideration price was Rs. 6,00,000/- and the same was received by the vendors from the defendant no 1 in three installments of Rs. 1,80,000/- each on 15.7.12, 17.7.12 and 20.7.12 and Rs. 60,000/- on 3.2.24. In that perspective there remains obvious discrepancies between the receipt issued in favour of the said Pinaki Biswas (since deceased) and the memo of consideration as mentioned in the copy of registered Deed of Conveyance.

However without looking for existence of such discrepancies even if for the sake of argument, it is taken to be granted that there was agreement for sale executed by the vendors in favour of the said Pinaki Biswas (since deceased) yet there is no dispute that the total consideration price was never Rs. 5,50,000/- but it was actually Rs. 6, 00,000/-. If the status of the plaintiff is really that of an illegitimate child of the said Pinaki Biswas (since deceased), he can at best inherit 1/3rd share in the properties left behind by the said Pinaki Biswas (since deceased). However so long the registered deed of sale stands in the name of the defendant no 1, there is hardly any chance of holding existence of any share of the plaintiff therein until and unless the plaintiff is able to establish his case by adducing cogent evidence. Moreover and what is most important is that even if the prayer of the plaintiff for temporary injunction is not granted no irreparable loss or injury will be caused to him as the loss or injury, if at all any, to be suffered by the plaintiff can be very well compensated by money value. That apart the plaintiff, admitting the defendant no 1 as one of the co-sharers, is not entitled to get any order of temporary injunction against other co-sharers.

Totally of the aforesaid deliberations impels this court to arrive at the definite conclusion that the plaintiff has not been able to make out any good prima facie case nor the balance of convenience and inconvenience appears to be tilted in his favour.

Considered as such, the application for temporary injunction is liable to be rejected.

Hence it is

Ordered

that the application for temporary injunction filed by the plaintiff on 29.2.24 u/o 39 Rules 1 and 2 read with section 151 CPC is hereby rejected on contest but without any order as regards costs.

To date for S/R and A/D upon the defendant nos 3 to 6.

D/C by me

Judge

Judge 2nd Bench