

Order no. 38 dated 25.08.2022

Parties file hazira. This day is fixed for hearing of the application for temporary injunction.

Heard both sides. Perused the application u/o 39 rule 1 and 2 read with section 151 of C.P.C., the written objection and the record.

This is a suit for partition and other consequential reliefs filed by the plaintiffs Bhakta Kala Limbu @ Meena Subba @ Meena Rai and Smt. Kamala Rai @ Mamala Sharma against defendant nos. 1 to 3 namely Sri Durga Rai, Sri Raju Rai and Sri Santa Kumar Gurung.

Plaintiffs have claimed 2/3rd share in Schedule 'C' property. It is the case of the plaintiffs that the suit property and other landed properties originally belonged to their predecessor namely Nar Bahadur Rai who died intestate.

Plaintiffs have alleged that defendants illegally and fraudulently without their knowledge and consent mutated their names in ROR pertaining to Khatian No. 364 standing in the name of Nar Bahadur Rai. Said land is undivided Hindu family property of the parties to the suit.

Plaintiffs are co-parceners of the said property being inherited from their deceased father. Defendant No. 3 has trespassed into the property and constructed the RCC building on the portion of the said property measuring 3 decimals without the knowledge and consent of the plaintiffs. Defendant no. 3 has no right, title and interest over the said property. He is a stranger and a trespasser.

Plaintiffs applied for mutation and correction of their names in respect of the suit property before the appropriate authority. The notice was issued to the defendants who appeared in the hearing but raised objection. Plaintiffs sent the legal notice asking the defendants for partition, recovery of possession and compensation of damaged but they did not respond to it. Hence, the suit.

Defendants (1 to 3) appeared and contested the application by filing joint written objection. It is the case of the defendants that after the death of Nar Bahadur Rai, it was only Tika Ram Rai who was entitled to inherit the estate of Lt. Nar Bahadur Rai and after the death of Tika Ram Rai, defendant nos. 1 and 2 and Bhanu Rai were entitled to the ancestral property. Defendants submit that after the death of Bhanu Rai, his son master Atib Rai (proforma defendant no. 2) would be entitled to inherit the share of his deceased father Bhanu Rai in the suit property.

Defendants submit further that the suit property was already distributed and demarcated after the death of their grand father Nar Bahadur Rai on 25.11.1984. Nar Bahadur Rai having died prior to the commencement of Hindu Succession (Amendment) Act, 2005, plaintiffs are not entitled to inherit the property. Defendants further submit that defendant nos. 1 and 2 have already mutated their names after the demise of their father Tika Ram Rai who was in possession of the entire land after the death of Nar Bahadur Rai being the sole surviving male legal heir of deceased Nar Bahadur Rai. Defendants state that plaintiffs were never in possession of the suit property as Tika Ram Rai was cultivating the land of his father. After his death, defendants 1 and 2 are cultivating the suit land. Proforma defendant no. 2 Smt. Sandhya Rai did not claim any shares in the ancestral property as she knew that she was not entitled to get it. Defendant no. 2 has gifted a portion of the land to proforma defendant no. 2 Smt. Sandhya Rai out of love and affection. Defendants prayed for rejection of the application.

Perused the record.

This is a suit for partition and other consequential reliefs. It is not in dispute that the suit property originally belonged to Nar Bahadur Rai, common predecessor of both the parties. Both the parties are claiming their rights through inheritance. The suit property has not been partitioned by metes and bounds.

In course of hearing, Ld. Advocates for both the parties submitted that the ad-interim order of injunction in the form of status quo as regards possession be made absolute till the disposal of the suit.

An ad-interim order of injunction is in vogue in the instant.

Having considered the facts and circumstances and nature of the suit, it would be apposite if the ad-interim order of injunction in the form of status quo on the suit property is made absolute till the disposal of the suit.

Hence, it is

ordered

that the application u/o 39 rule 1 and 2 read with section 151 of C.P.C is allowed on consent.

The ad-interim order of injunction dated 01.10.2019 is hereby made absolute till the disposal of the suit.

To 13.09.2022 for discovery and inspection.

D/c by me,

[Signature]
13/09/2022

[Signature]
13/09/2022