

Title Partition Suit 01/2024 (CIS 01/2024)

WB 01110

Order No. 13 dated 06.12.2024

Today is fixed for passing order relating to the injunction petition filed by the plaintiff under order 39 rule I & II read with section 151 of CPC filed on 30.07.2024.

By filing the instant petition the plaintiff prayed for issuance of temporary injunction restraining the defendants from carrying out any construction work in Schedule 'C' property during the pendency of the suit.

The instant suit is suit for partition. The plaintiff case in nut shell is that Smt. Chungla Bhutia @ Amla Chaugla Bhutia, mother in law of plaintiff no. 1 and grand mother of plaintiffs no. 2, 3 and 4 and mother of defendants. During her life time owned and possessed a land measuring more or less 0.8 acres lying and situated in LR. Plot No. 1156 at Upper Gumba, Hatta, Tirpai Road, district Kalimpong within the jurisdiction of this Court and described in the schedule 'A' of the plaint. Said Chungla Bhutia sold a plot of land measuring more or less 0.323 acre to her son Tshering Penjo Bhutia vide Registered Deed of Sell 15th January, 1999. After obtaining the deed he mutated his name became the owner of said 0.323 acre land described in the 'B' schedule. After selling 'B' Schedule land to his son said Tshering Penjo Bhutia, Smt. Chungla Bhutia remained absolute owner in respect of the rest portion of the land mentioned in the 'C' Schedule property. Said Chungla Bhutia died in the year 2005 leaving behind her sons and daughters namely Wangchuk Tshering Bhutia, Tshering Penjo Bhutia, Norbu Gyaltchen Bhutia, Yangchen Bhutia and Tshering Choden Bhutia as her surviving legal heir. On 3rd March, 2014, Tshering Penjo Bhutia also died before partition of 'C' Schedule property among the legal heir of Chungla Bhutia. And after his death present plaintiff and defendants are joint owner and possessor of schedule c property. The plaintiff alleged that due to absence of the plaintiff the defendant no. 1 has illegally constructed a safety tank within the 'C' schedule property without informing the plaintiffs and also covered the construction areas attached to the main building with green agro-net so the plaintiff cannot see their illegally constructed work, hence the injunction petition is filed in order to restrain the defendant no. 1 from said illegal work.

Defendant no. 1 and 3 filed the written objection against the temporary injunction petition on 25.09.2024. denying the case of the plaintiff and inter alia stated that the plaintiff are not the owner of 'C' Schedule property. The defendant no. 1 is the absolute and recorded owner of 'C' Schedule property and she is in possession of the same. Defendant no. 1 claimed that said safety tank was constructed in the year 1998 in the 'C' schedule property when deceased Chungla Bhutia started building her residential house. The defendants prayed for rejection of injunction petition.

The plaintiff has filed the photocopy of registered deed of sale dated 05.01.1998, tax receipt, some original photographs and a copy of complaint.

The defendants on the other hand produced photocopy of partition agreement and record of rights.

During hearing, the Ld. Advocate for both sides argued on the fact of attempted construction by defendant no. 1 on the basis of some photographs.

Perused the record. Considered.

Now this fact has not been denied by either sides that the parties are the co-sharers of in respect of the suit property.

From the record it transpires that during lifetime the B schedule property from has been transferred in favour of the plaintiff's predecessor in interest from A schedule. Regarding the jointness of Scheduled property, the defendant no. 1, 2 and 3 has inter alia taken plea that defendant no 1 is the sole owner of the C scheduled property but except one incomplete partition agreement nothing has been produced in order to show the said prima facie contention.

In these circumstances, this Court is of the opinion that as at this prima facie stage, the C schedule property appears to be a joint property and defendant no. 1 by affidavit claiming the same as her personal property but without the support of any prima facie documents in this regard, there is prima facie case in favour of the plaintiff. And if without any sanction and permission the defendant no. 1 raised any construction over the C Schedule property claiming the same as her personal property then the plaintiff may suffer inconvenience if a decree of partition is passed after the trial.

On the other hand if during the trial if both the parties maintain status quo in respect of nature, character and possession of the C Schedule property, neither party will be prejudiced.

Hence, it is

Ordered

that the injunction petition

filed by the plaintiff under Order XXXIX Rule 1 and 2 read with section 151 of CPC is allowed. The plaintiff and defendants no. 1, 2 and 3 are directed to maintain status quo in respect of nature and character of the C Schedule property till the disposal of the suit.

Fix 05.02.2025 for framing issues.

D/c by me,

Sd/-

CJSD, Kalimpong.

Sd/-

CJSD, Kalimpong.