

**Misc appeal- 15/2016.**

**Order no. 11 dt. 14/02/2017.**

Both the parties file separate haziras through their respective Ld. Lawyers.

Appellant files a petition supported by an affidavit praying for extension of the Injunction order so granted.

Today is fixed for passing order in respect of petition under order 39, Rule 1 & 2 read with Section 151 CPC dt. 20/09/2016 and also petition for mandatory injunction dt. 02/10/2016.

Case record is taken up for passing order in respect of above two petitions.

By filing petition u/o 39 rule 1 & 2 R/W section 151 CPC appellant has prayed for an order of temporary injunction restraining the respondents so that they may not disturbed his peaceful possession, which is on the North Side of his shop room and also the shop room situated in the 'ka' schedule property till the disposal of the present Misc Appeal on the ground that he purchased 'ka' schedule property along with shop room from one Bidyutlata Jana by a registered deed of sale dt. 27/06/2016; that Bidyutlata obtained 1.750 decimal of land out of 07 decimal of land in plot no. 2120 of mouja Brajalal chak by way of inheritance from her mother Sobharani Maity and by a deed of gift from her two brothers on 16/08/2013; that he was a tenant under Bidyutlata in the shop room situated in the 'ka' schedule land; that he has a xerox and stationary shop in said room; that there is a shutter on the Western side of the shop room i.e in front of said shop room and another shutter on the North-Eastern corner of said shop room. There is alley on the adjacent to the North of said shop room and he uses that alley for egress and ingress to the shop room through the North-Eastern door. The respondents had also purchased a shop room from Bidyutlata prior to his purchase. The front of said shop room is on the Eastern side. There is also alley on the North of respondent's shop room. They have already closed the Eastern entrance of said alley. After purchasing of 'ka' schedule land by him, respondents often used to disturb his possession of alley. Ultimately on 25/08/2016 respondents threatened him to block the alley and they would close the shop room by lock and key. Thereafter, he complained before the local bazar committee about the matter, but to no effect. He filed suit before Ld. Civil Judge (Jr. dny),Haldia praying for declaration and injunction along with a petition for temporary as well as ad interim injunction against the respondents, but the Ld. Court Below refused his prayer for ad interim injunction. Hence this petition for temporary injunction.

Respondents have contested the above injunction petition by filing W.O dt. 02/10/2016, wherein they have denied each and every allegations brought against them by the appellant. According to them the injunction petition is not maintainable; that the said petition dt. 20/09/2016 is bad in law; that the appellant has no locustandi to file this injunction petition. According to them, one Panchamibala Samanta was the owner of 01-01/16 decimals out of 7 decimals in suit plot no. 2120 and having her good title, possession, interest therein she sold out said area of 01-01/16 decimal to one Satyanarayan Panda by a deed of sale bearing no.11475 dt. 18/11/1974 and left her possession in his favour accordingly. Said Satyanarayn Panda having his good right, title, interest and possession therein sold out said area of 01-01/16 dec. to one Sankar prasad Maity by a deed of sale being no. 7025 dt. 12/09/1984 and left his possession in favour of the buyer and thereafter, said Sankar Prasad Maity having his good title, possession and interest therein sold out an area of 01/4 dec. in plot no. 2120 and an area of 01/4 decimals in plot no. 2134 to respondent

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**Misc appeal- 15/2016.**

Order no. 11 dt. 14/02/2017.

no 1 by way of deed of sale being no. 6497 dt. 25/10/1989, executed on 8<sup>th</sup> Kartik, 1396 B.S and registered on 25/10/89 and left his possession in favour of buyer and thereafter, Sankar prasad Maity sold out an area of 01.4 decimals in plot no. 2120 and an area of 01.4 decimals in plot no. 2134 to respondent no. 2 by way of sale deed being no. 6498 dt. 25/10/1989; executed and registered on 25/10/2019 and left his possession in her favour. Again said Sankar Prasad Maity sold out an area of 9.16 decimal in plot no. 2120 to them (respondent nos. 1 and 2) by a deed of sale bearing no. 6587 dt. 06/11/1989 and left his possession in their favour and said purchased area has duly been recorded in L.R.R.O.R in favour of said respondents against Kh. Nos. 2142 and 2143 and said respondents are paying rent regularly; that this respondents constructed one storied pucca room, measuring an area of 43 sq. foot on suit plot no. 2120 and another room on plot no. 2134 and have been possessing the same peacefully. It is further stated that appellant by suppressing material facts filed the injunction petition before this Court. According to them appellant purchased his so called portion from one Smt. Bidyutlata Jana by a vague deed of sale being no. 3975/2016 dt. 27/06/2016; that the appellant has no right, title, interest and possession over his so called purchased 'ka' schedule property. In that circumstance respondents have prayed for rejection of the temporary injunction petition dt. 20/09/2016.

Hd. Ld. Advocate for both the parties at length. Perused the temporary injunction petition dt. 20/09/2016, its W/O dt. 02/10/2016 and the documents so filed by the parties. According to the respondents, the deed of sale being no. 3975/2016 dt. 27/06/2016 by which the appellant purchased 'ka' schedule land along with shop room from Smt. Bidyutlata Jana is a vague deed. It is not the case of the respondents that the said deed is a forged one. Therefore, the said deed cannot be said to be a forged deed and at the same time I must say that until and unless the said deed is declared void or forged one by a competent Court of Law, said deed is still in force. From the said deed being deed no. I-3975/2016 dt. 26/06/2016, it is seen that the appellant purchased 'ka' schedule property from Smt. Bidyutlata Jana. It also appears from said deed that the appellant purchased the 'ka' schedule property along with shop room adjacent to the room, which he purchased earlier. It is further case of respondents that prior to the execution and registration of the afore said deed dt. 27/06/2016, Bidyutlata Jana executed and registered a deed of sale in respect of the suit plot being deed no. 2378/2016 on 19/04/2016 in favour of Purnima Singha and so appellant has/had no right, title, interest and possession over the 'ka' schedule property. Perused the photo copy of said deed bearing no. I-2378 dt. 19/04/2016. On careful perusal of the said deed prima facie it is seen that the property purchased by the appellant and the property sold out by the said deed are different and so, the argument in this regard, as advanced by the Ld. Lawyer for the respondent cannot be accepted at this stage. According to the appellant, after purchase of 'ka' schedule property, the respondents started disturbing his possession and ultimately on 25/08/2016 the respondents threatened him to block the alley and they would close the shop room under lock and key. I find from the LCR that local inspection in respect of the 'ka' schedule property was held on the prayer of appellant and Ld. Commissioner submitted his report before the Ld. Court below on 15/11/2016. On careful perusal of the said report, I am of the view that the said report supports the case of the appellant. Therefore, considering the facts and circumstances of the case and in view of my above made discussion and findings, I am of the

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**Misc appeal- 15/2016.**

Order no. 11 dt. 14/02/2017.

view that the appellant has been able to make out a prima facie case and the balance of convenience and inconvenience is certainly in favour of the appellant and if at this stage an order of temporary injunction in the form of status quo is not passed, the appellant may suffer irreparable loss.

Accordingly it is ,

**ORDERED**

that the petition u/o 39 Rule 1 & 2, R/W section 151 of CPC dt. 20/09/2016 is allowed on contest but without any order as to cost.

Both the appellant and respondents are hereby directed to maintain status quo with regard to nature, character and possession in respect of the 'Ka' schedule property to the injunction petition till disposal of the present Misc Appeal.

The temporary injunction petition as well as petition for extension of order of ad interim injunction are thus disposed of.

The petition for temporary mandatory injunction dt. 2/10/2016 is taken up for passing order.

By filing petition for the temporary mandatory injunction, the appellant has stated that this Court was pleased to pass ad interim order directing both the appellants and respondent nos. 1 and 2 to maintain status quo in respect of the suit property, but on receiving notices respondents became very furious and they tried to obstruct the alley and also tried to lock the shop room after ousting the appellant from there and so he prayed before this Court to pass an order directing O.C Bhabanipur P.S to look so that the respondents obey the order of this Court and may not disturb the possession of the appellant in the shop room and alley and thereafter on 27/09/2016 this Court directed O.C, Bhabanipur P.S to see so that both the parties comply the order of ad interim injunction. After receiving notices of appeal, the respondents appeared on 28/09/2016. On the same day at about 9:30P.M violating the order of injunction respondents with their men assaulted him (appellant) and his wife and snatched a bag with a keys of shop room along with Rs. 50,000/- . Thereafter, respondents opened the shutter of the shop room and stolen various types of stationary goods and locked the shutter with their lock and key and a result of which appellant could not open the shop room, which is the only source of income of his family. On the next day appellant went to Bhabanipur P.S to lodge G.D, but police refused to take the G.D and finding no other alternative appellant filed a complainant u/s 147/449/448/323/354 (B)/ 37 and 380 of IPC against the respondents and their men before the Ld. ACJM, II, Haldia on 06/10/2016 and prayed for investigation u/s 156(3) of Cr.P.C and accordingly, Ld. ACJM, has been pleased to pass an order directing O.C, Bhabanipur P.S to cause investigation treating the same as FIR, but O.C did not take any action against the respondents. As Court was closed from 30/09/2016 to 1/11/2016 due to puja vacation, appellant could not file any petition before this Court. In the circumstances appellant has prayed for an order of temporary mandatory injunction directing the respondents to unlock the shutter of the shop room of the appellant mentioned in the 'ka' schedule property to the injunction petition.

Respondents by filing W.O against the petition for temporary mandatory injunction on 29/06/2016 have denied all the allegations brought against them. According to the respondents,

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**Misc appeal- 15/2016.**

Order no. 11 dt. 14/02/2017.

the appellant purchased the suit land, as claimed, from one Smt. Bidyutlata Jana by a vague deed of sale being no. 3975/2016 dt. 27/06/2016 and the appellant has / had no shop at all as alleged on the disputed plot and so appellant has/had no right, title, interest possession over his so called purchased portion as mentioned in 'ka' schedule property as because said property exclusively and absolutely belongs to the respondents. In the circumstances the respondents have prayed for rejection of petition for mandatory injunction.

Hd. both sides at length. Considered. Perused the petition for temporary mandatory injunction and its W.O along with documents so filed by the parties on record. According to the respondents, the deed of sale being no. 3975/2016 dt. 27/06/2016 by which the appellant purchased 'ka' schedule land along with shop room from Smt. Bidyutlata Jana is a vague deed. It is not the case of the respondents that the said deed is a forged one. Therefore, the said deed cannot be said to be a forged deed and at the same time I must say that until and unless the said deed is declared void or forged one by a competent Court of Law, said deed is still in force. From the said deed being deed no. I-3975/2016 dt. 26/06/2016, it is seen that the appellant purchased 'ka' schedule property from Smt. Bidyutlata Jana. It also appears from said deed that the appellant purchased the 'ka' schedule property along with shop room, adjacent to the room, which he purchased earlier. It is further case of respondents that prior to the execution and registration of the afore said deed dt. 27/06/2016, Bidyutlata Jana executed and registered a deed of sale in respect of the suit plot being deed no. 2378/2016 on 19/04/2016 in favour of Purnima Singha and so appellant has/had no right, title, interest and possession over the 'ka' schedule property. Perused the photo copy of said deed bearing no. I-2378 dt. 19/04/2016. On careful perusal of the said deed, prima facie it is seen that the property purchased by the appellant and the property sold out by the said deed are different and so, the argument in this regard, as advanced by the Ld. Lawyer for the respondent is not accepted at this stage. According to the appellant, on 28.09.2016 respondents and their men assaulted him and his wife and snatched his bag with keys of disputed shop room along with Rs. 50,000/- and respondents locked the shutter of his shop room with their lock and key and as a result of which he could not open the said shop room, which is the only source of his income and so, he was compelled to file a complaint case against the respondents for the alleged crime before the Court of Ld. ACJM, Haldia, when police refused to take his complaint and Ld. ACJM sent his petition of complaint u/s 156(3) Cr.P.C to the O.C Bhabanipur P.S for investigation. The fact of filing the aforesaid case has not been denied. Unless and until a person is disturbed, he does not chose to take shelter of Court. Here in this suit, the appellant has taken the shelter of Law, not the respondents. So, it can be presumed that the appellant has been forcefully dispossessed from his disputed shop room as mentioned in the 'ka' schedule to the injunction petition by the respondents. Therefore, considering all the facts and circumstances of the suit and in view of my above made observation and findings, I am of the view that the appellant is entitled to get an order of mandatory injunction, as prayed for.

Accordingly, it is

**ORDERED**

that the petition for temporary mandatory injunction is allowed on contest but without any order as to cost.

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**Misc appeal- 15/2016.**

Order no. 11 dt. 14/02/2017.

Respondents are thereby directed to unlock the shutter of the disputed shop room of the appellant as mentioned in the 'Ka' schedule of the injunction petition immediately and to submit report of compliance by the date fixed below.

Officer in charge, Bhabanipur P.S is hereby directed to see so that this order may be strictly complied with by the respondents and to report by the date fixed below. The petition for temporary mandatory injunction is thus disposed of.

Fix 28/02/2017 for submission of report by the O.C Bhabanipur P.S as well as respondents.

Let a relevant portion of copy of this order be sent to the O.C Bhabanipur P.S for his information and strict compliance.

Dict. & corr. by me

A.D.J

Additional District Judge,  
Haldia, Purba Medinipur.  
14.02.2017