

Title Suit No.16 of 2023

Order No.17 dated 10.04.2025

Today is fixed for hearing of the injunction application u/Or 39 r 1 & 2, and under Section 151 of CPC.

Plaintiff filed hazira and prayed for extension of the ad interim injunction by filing petition and filed Counter affidavit against the WO of injunction application.

Defendant Nos. 1 and 2 filed hazira.

This is the suit for declaration as well as permanent injunction.

Ld. Advocate of the plaintiff moves the application for ad interim injunction and submitted that the properties described in schedule 'Ka' & 'Kha' of the plaint are the subject matter of the present suit. Ld. Advocate contended that schedule 'Kha' property is part and parcel of the schedule 'Ka' property. Ld. Advocate further submitted that schedule 'Ka' suit property previously belonged to Nirapada Marik, who was the predecessor of the parties to this suit. Ld. Advocate contended that the plaintiff and the defendants (excluding defendant Nos. 1 & 9) have acquired right, title and interest in the suit property, as described in the 'Ka' schedule of the plaint, by way of inheritance from their predecessor Nirapada Marik. The said Nirapada Marik died leaving behind his widow Susama Marik, four sons namely, Jayanta (plaintiff), Swapan (defendant no. 2), Akshay and Paritosh, as well as two daughters called Niyati and Pranati (defendant Nos. 7 & 8). Ld. Advocate further submitted that due to her advanced age the said Susama Marik was in a poor state of health in her last years.

The plaint case is that on the pretext of getting her examined by a doctor, defendant Nos. 1 & 2 took Susama Marik to the office of the ADSR at Amta and misled her into executing a gift deed, being deed No. 4820 of 2022, in favour of defendant No. 1 (who is the son of defendant No. 2 and the grandson of the said Susma Marik) by resorting to fraud and mis-representation. The plaintiff has contended that defendant No. 1 has acquired no right, title or interest in the suit property on the strength of the impugned gift deed which is void, inoperative and not binding upon the plaintiff and the proforma defendants in any manner.

The plaintiff has claimed that neither her nor the proforma defendants were aware of the execution of the impugned gift deed and that till recently he as well as the proforma defendants were peacefully possessing the suit property without any interruption or objection from any corner. The said Susama Marik expired on 12.12.2022 and only a few days after her death, all of a sudden on 30.12.2022 defendant Nos. 1 & 2 came to the suit property and openly declared that they will not allowed the plaintiff and the proforma defendant to possess the Kha schedule property as defendant No. 01 has acquired right, title and interest in the same on the basis of the impugned gift deed executed in his favour by the said Susama Marik. The plaintiffs was completely stunned at the revelation made by the said defendants. Accordingly, he took a certified copy of the impugned gift deed and was stunned upon going through the same that defendant Nos. 01 and 02 misled the said Susama Marik into executing the said gift deed by taking advantage of her ill health as well as by practicing fraud upon her. The plaintiff has further claimed that on the basis of the impugned gift deed defendant Nos. 1 and 2 are threatening to forcibly dispossess the plaintiff from the Kha schedule property which is a part and parcel of the Ka schedule suit property. The said

Title Suit No.16 of 2023

defendants have further threatened to change the nature and character of the Kha schedule property by making illegal construction on it. Besides this, they have further threatened to transfer the Kha schedule property to a third party for valuable consideration. Ld. Advocate of the plaintiff contended that for the said reason the plaintiff has been compelled to file the present suit in order to protect his interest in the suit property. Ld. Advocate, therefore, threat that and temporary order of injunction be passed against defendant Nos. 1 & 2 otherwise the very object behind the filing of the present suit would stand defeated.

Ld. Advocate for the defendants stated that the plaintiff never took care of his parents and was residing in a separate mess. The donor has gifted the suit property in favour of defendant No. 1 without being influenced by any person. She was herself present at the registration office for the registration of the deed and the deed is not the outcome of any fraud or collusion. The defendant No.1 has acquired the right, title and interest over the suit property by virtue of the gift deed and his name is also recorded in the record of rights.

Heard. Considered.

After perusal of the materials of record it is seen that the mother of the plaintiff and the defendant No. 2 has gifted the entire suit property in favour of the defendant No. 1, her grandson. Both the parties are claiming interest over the suit property on the basis of the gift deed. So whether the gift deed is valid or not cannot be decided at this stage without taking into evidence. It is necessary to protect the property at this stage for the ends of justice.

Upon a close inspection to the matter and considering the entire facts and circumstances of the case, on perusal of the injunction application as well as affidavit and relevant documents submission of both the parties, this Court does not find any impediment in allowing the injunction application. Further the Court thinks that without the order of injunction the plaintiff shall suffer irreparable loss and injury. In view of the above circumstances prayer for temporary injunction is considered and allowed in the form of status quo. So both the parties should maintain status quo as to the nature, character, possession and activities as on this day in respect of the suit property till disposal of the suit.

Hence, it is

ORDERED

The application u/Or 39 r 1 & 2 CPC r/w section 151 CPC is allowed and disposed of on consent without any order as to cost. Both the plaintiff and defendants are hereby directed to maintain status quo with regard to nature, character, possession and activities as on this day in respect of the suit property till the disposal of the suit.

To **20.05.2025** for framing of issues.

D/c by me

CJ

**Civil Judge (Jr Divn)
Amta, Howrah**