

Title Suit – 109 of 2010

Order No. 43 dated 21.11.2017

Today is fixed for hearing of injunction application as last chance I.D. rejected.

Both parties filed hazira.

I have heard both the parties at length.

Considered.

Now the record is taken up for hearing and passing necessary order upon the injunction application.

The plaintiff's case in a nutshell is that the 'Ka' schedule suit property was previously belonged to Prosad Chandra Adak, Nandalal Adak and Tustapada Adak to the extent of 1/3rd shares each. Prosad Chandra Adak died leaving behind his two sons namely Banshi Adak and Satish Chandra Adak who have got equal share in the property left by their father i.e. 1/3rd share each in the 'Ka' schedule suit property. Banshi Adak while owning and possessing 1/6th share in the 'Ka' schedule suit property, died leaving behind his wife (plaintiff No. 5) and four sons i.e. plaintiff No. 1 to 4 and six daughters i.e. plaintiff No. 6 to 11, who have jointly got 1/6th share in the 'Ka' schedule suit property. Satish Chandra Adak died issue less leaving behind his brother's sons and daughters i.e. the plaintiff No. 1 to 11 as his legal heirs. In this way, the plaintiffs have jointly got 1/3rd share in the 'Ka' schedule suit property. Tustapada Adak while owning and possessing his 1/3rd share, died leaving behind his wife (plaintiff No. 13), one son (plaintiff No. 12) and three daughters i.e. plaintiff No. 14 to 16 as his legal heirs, who have jointly got 1/3rd share in the 'Ka' schedule suit property. In this way, the plaintiffs have 2/3rd share in the 'Ka' schedule suit property. The plaintiff submitted that the defendant No. 4 to 13 have no right, title, interest and possession over the suit property. As per the plaintiff, the defendant No. 1 to 3 who are the legal heirs of Nandalal Adak have 1/3rd share in the schedule suit property. As per the plaintiff, the names of defendant No. 4 to 13 have been erroneously recorded in the finally published LRROR in respect of the suit property and the said record is illegal, invalid, inoperative and not binding upon the plaintiffs. The defendants by taking the advantage of erroneous record of right have tried to dispossess the plaintiffs from the peaceful possession of their suit property. Hence finding no

other alternative the plaintiff has filed this instant suit and now prayed for an order of injunction against the defendants.

Defendant No. 4 to 7 by filing the written objection have contested the instant suit and denied all the materials allegation contained in the said application of the plaintiff, inter alia stated that the 'Ka' schedule suit property was previously belonged to Rakhal Chandra Adak (predecessor of the plaintiffs and defendants). Said Rakhal Chandra Adak was died leaving behind his five sons namely Prosad, Nandalal, Botu, Tustapada and Bistupada as his legal heirs who have got the 'Ka' schedule suit property to the extent of 1/5th share each. Subsequently, Bistupada Adak died leaving behind his only son Nemai Chandra Adak who has inherited the 1/5th share of the 'Ka' schedule suit property and he transferred the same to defendant No. 4 to 5 by way of registered deed of sale being No. 3374 for the year 1966. In order to prove their contention, the defendants have produced the registered deed being No. 3374 for the year 1966. Subsequently, Tustapada Adak transferred his 1/5th share to the defendant No. 4 & 5 by way of registered deed of sale being No. 552 for the year 1967. In this way, defendant No. 4 & 5 became the owner and possessor of 2/5th share of the 'Ka' schedule suit property. In order to prove their contention, the defendants have produced the registered deed of sale being No. 552 for the year 1967. Sanatan Adak died leaving behind his wife and three daughters who have inherited the 1/5th share in the suit property. Rasbehari Adak died leaving behind his three sons i.e. defendant No. 6 to 8, his wife namely Bharati Adak and one daughter namely Shyamoli Das. Hence, the wife of Sanatan Adak and his three daughters are the necessary parties in this suit. Botu Adak has transferred his 1/5th share to his brother Nandalal Adak by way of registered deed of sale. In this way Nandalal Adak got 2/5th share in the suit property and died leaving behind his wife, son and daughters. As per the defendant, the plaintiffs have only 1/5th share over the suit property and they have filed this instant suit by suppressing the material facts of the suit property. Hence, the plaintiff did not come before the Court with clean hands; accordingly, the instant injunction application is liable to be rejected with cost.

I have perused the injunction application, the written objection there to and other materials available on record very carefully.

Considered.

On careful perusal of the case record it appears that the defendants have filed their title deeds in respect of their share over the suit property and which

is not controvert by the plaintiff by filing any affidavit in opposition. It is the cardinal principle of law that the registered deed is itself a constructive notice to all concerns. A registered instrument is valid and binding upon the parties until and unless said registered instrument is declared as void by any competent Court of law. It appears to this Court that the plaintiff took the dilatory tactics in the hearing of injunction application. It appears that the plaintiff did not come with the clean hands in this suit. It prima facie appears to this Court that the plaintiffs have intentionally stated the false averment in their pleadings regarding the devolution of interest of the suit property. Not only that, the plaintiff also did not state the fact regarding the existence of registered deeds of sale executed in favour of defendant No. 5 & 6. The plaintiff by filing the instant suit have prayed for declaration that they have 2/3rd share in the suit property. On careful perusal of the case record and after scanning all the documents as available on record it prima facie appears that the plaintiffs have prima facie failed to prove that they are the owner and possessor of 2/3rd share of the suit property. The plaintiff should have filed the partition suit by impleading all the co-sharers of the schedule suit property. It is the cardinal principle of law that one co-sharer is not entitled to get an order of temporary injunction against the others save and except the other co-sharers are trying to diminish the value of the property. In the instant suit the plaintiff is failed to make out a prima facie case in their favour. So far as the balance of convenience and inconvenience is concerned, the same is weighs in favour of the plaintiff. In my considered view, if the injunction application is rejected the plaintiff cannot face irreparable loss and injury, on the other hand, if allowed the defendant will face irreparable loss and injury. Hence, I am of the view to rejecting the instant application filed under Order 39 Rule 1 & 2 of C.P.C.

Hence it is,

ORDERED

That the injunction application filed under Order 39 Rule 1 & 2 read with Section 151 of C.P.C. is hereby considered and rejected on contest without any order as to costs.

Fix for framing if issues.

D/C by me

C.J.(Jr.Divn)
Amta, Howrah

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