

Title Suit No. 28 of 2021

Order No.38 dated 10.07.2024

Today is fixed for hearing of the application u/S 151 of C.P.C.

Plaintiff and defendant Nos. 1 & 8 filed hazira.

Defendant Nos 1 & 8 filed written objection against the application u/S 151 and also written objection against the application u/O 39 Rule 7.

Ld. Advocate of both the parties stated that the petition u/O 39 Rule 1 & 2 and the petition u/S 151 of C.P.C. be heard together. As such both the petitions are taken up for hearing.

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

Heard the Ld. Advocate of the plaintiff who submitted that the plaintiff is co-sharers in respect of the suit property, as described in the schedule of the plaint, along with the defendants. The plaintiff has further claimed that the suit property is actually a joint property which is yet to be partitioned by metes and bounds between the co-sharers. It is the case of the plaintiff that on and from 10.09.2020 the defendants in collusion with each other have been creating obstruction in the peaceful enjoyment of the plaintiff's share in the suit property. In fact, on and from 23.12.2020 the defendants have constantly attempted to change the nature and character of the suit properties described in the schedule of the plaint by forcibly attempting to make new construction on the best portion of the same even though the suit property is yet to be partitioned by metes and bounds. When the plaintiff prevented them from doing so, the said defendants threatened the plaintiff with dire consequences. In fact, the defendants have continued to make repeated attempts to raise illegal construction on the suit property. In addition to this they have also threatened the plaintiff that they will forcibly dispossess the plaintiff from the suit property. Ld. Advocate of the plaintiff thus submitted that the plaintiff was for the aforesaid reasons compelled to file the present suit against the defendants in order to protect his right, title, interest in the suit property which is a joint property.

Plaintiff further submitted that the defendant No. 1 and his mother both have executed the deed in favour of the plaintiff and such the plaintiff is in possession of the same. Rahima Begum has transferred her residue share to her two sons. Both her sons have sold their whole share to Ansura Khatun Bibi who is a party to the suit. So no co-sharers are left behind. The suit property is undivided and undemarcated one. Moreover, in the written objection against the application of Order 39 Rule 2A in Misc Case 6 of 2021 the OP has stated that due to need of money we have transferred the property. But now the defendant No. 1 is trying to change the nature and character of the suit property. He, therefore, prayed for an order of temporary injunction against the defendant Nos. 1 & 8 restraining them from forcibly dispossessing the plaintiff from the suit property as well as from changing the nature and character of the suit property in any manner by making any construction over any portion of the same. He also pray that the defendants be restrained from transferring the suit property to any third party till the disposal of the suit.

Contd...

Ld. Advocate for the defendant No. 1 & 8 raised vehement objection stating that the defendant No. 1 and Rahima Begum have no right to transfer any part and parcel of the property as because it has already been settled by Rahima Begum through the deed of settlement. The deed of settlement was not canceled by following the due process of law. Rahima is not made a party to the suit when she is also the co-sharer. As such the deed of transfer is a voidable agreement and no equitable relief can be prayed on the basis of such deed.

Defendant relied on case laws : 2016(2) ICC (CAL)1.

AIR 2014, Karnataka

Heard. Considered.

After perusal of the record it is seen that the plaintiff is claiming the title through the registered deed of sale which was duly executed by defendant No. 1 and her mother jointly. The property is undivided and undemarcated one. All the parties to the suit are the co-sharers as admitted by both of them. From the registered deed of sale it is crystal clear that the plaintiff has a prima facie right, title and interest over the suit property. Defendant No.1 is disputing the title of the plaintiff on the basis of the voidable deed. So whether the deed of the plaintiff is voidable or not cannot be decided at this stage without taking into evidence or going into the merits of the suit. Defendant No. 8 is also the co-sharer. The plaintiff is in possession of the suit property. So at this stage it is necessary to protect the property as well as the possession, right, title and interest of both the parties.

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 and activities as on this day in respect of the suit property till disposal of the suit.

Later,

The application u/S 151 of C.P.C. is also taken up for hearing.

Heard Ld. Advocate for the plaintiff who submitted that this Court was pleased to pass an order of injunction ex-parte by directing both the parties to maintain status quo with regard to the nature, character and activities as on this day in respect of the schedule property. But during the pendency of the proceedings it is seen that the defendant Nos. 1 & 8 created all sorts of troubles in the peaceful possession of the suit property by the plaintiff. They are deliberately making construction over the suit property violating the order of interim injunction passed by this Court and even threatening the plaintiff with dire consequences in case of any resistance. Hence the plaintiff prays for directing the O.C of Penro Police Station to implement the ad interim order passed by this Court.

Contd....

Ld. Advocate for defendant Nos. 1 & 8 raised vehement objection.

Heard. Considered.

After perusal of the record, it is seen that the Order of injunction was passed by by directing both the parties to maintain status quo with regard to the nature, character and activities as on this day in respect of the schedule suit property.

The plaintiff has already filed one Misc Case being No. 6 of 2021 for violation of the ad interim order of injunction. Moreover there is no cogent evidence which will prove that police help is required. So this Court is not inclined to allow the petition for police help.

Hence,

ORDERED

That the instant application under section 151 of the code of civil procedure filed by the plaintiffs for police help is refused on contest.

That 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 defendant Nos. 1 & 8 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 14.08.2024 for hearing of the application u/O 39 Rule 7.

D/c by me

CJ

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