

Title Suit No. 48 of 2020

Order No.23 dated 04.03.2024

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

Plaintiff filed hazira.

Defendant Nos. 1 to 3 filed hazira.

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

Heard the Ld. Advocate of the plaintiffs who submitted that the plaintiffs have acquired right, title and interest over the 'Ka' schedule property on the strength of registered instruments in the form of sale deed as well as gift deed. It is the case of the plaintiffs that the suit property originally belongs to Harendranath Mukherjee. He was succeeded by his son Satyandranath Mukherjee. The said Satyandranath Mukherjee died leaving behind four sons namely Sukumar, Sanat, Plaintiff No. 4 Samir and Subir as well as two daughters namely plaintiff No. 5 Chanda and plaintiff No. 6 Kona. The said Sanat Mukherjee sold his 1/6th share i.e. 3 ¼ decimals of land in the 'Ka' schedule property vide deed No. 1487 dt. 17.02.2009 to plaintiff No. 1 and proforma defendant No. 7 who are the office bearers of charitable organization namely Baba Janardan Sebasadan. Subsequently on 09.03.2015 plaintiff No. 1 and defendant No. 7 gifted half of the aforesaid 3 ¼ decimals of land i.e. 1.623 decimals of land to Naopara Muktaram Club. This gift was accepted by plaintiff Nos. 2 & 3 who are the office bearers of the aforesaid club. It is pertinent to mention here that plaintiff No. 4 to 6 are the remaining heirs of Lt. Satyandranath Mukherjee and they jointly have half share in the 'Ka' schedule property. It is the case of the plaintiffs that the sons of Lt. Satyandranath namely Sukumar and Subir in collusion with Kona Sengupta i.e. the daughter of Jitendranath sold more than their lawful share in the 'Ka' schedule property to the defendant on 31.08.2019. The further case of the plaintiffs is that taking advantage of the lock-down imposed all over the country in March 2020, defendant Nos. 2 to 4 are trying to trespass the suit property with the objective of making construction over the same thereby completely changing its nature and character. When the plaintiffs tried to prevent them from doing so, they are threatened with dire consequences by the defendants. Ld. Advocate of the plaintiffs thus submitted that the plaintiffs were for the aforesaid reasons compelled to file the present suit against the defendants in order to protect their right, title, interest in the suit property. So, they therefore, prayed for an order of temporary injunction against the defendants.

Ld. Advocate for the defendant raised vehement objection stating that there

is mis-description of the properties as there is no boundary or directions are mentioned. Specific portion cannot be declared as there is no partition in the suit property. All the co-sharers were not impleaded. Plaintiff has not sought for partition. So the petition should be rejected.

Heard. Considered.

After perusal of the documents on record it is found out that the legal heirs of the owner of the property have transferred their shares to some of the plaintiffs and some defendants. The property is not partitioned the defendants have acquired the right, title and interest on the basis of the deeds by which the legal heirs of Satyandranath Mukherjee have transferred their shares. The plaintiffs have not sought for any relief in respect of the partition. The ownership and title of the plaintiffs cannot be determined without taking into evidence.

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 by the plaintiffs, this Court is of the view that the balance of convenience and inconvenience does not weigh in favour of the plaintiffs. Further the Court thinks that without the order of injunction the plaintiff shall not suffer irreparable loss and injury. In view of the above circumstances prayer for temporary injunction is refused.

Hence, it is

ORDERED

The application u/Or 39 r 1 & 2 CPC r/w section 151 CPC is refused and disposed of on contest without any order as to cost.

To 30.04.2024 for framing of issues.

D/c by me

CJ

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