

Order No. 8 dated 07.02.2020

Today is fixed for hearing of the injunction application.

Both parties are present.

Accordingly the temporary injunction application is taken up for hearing.

Heard the Ld. Advocate of the plaintiff who submitted that the 'A' schedule property of this suit comprises of 58 decimals of sali land (southern portion) out of 116 decimals of sali land pertaining to RS & LR plot No. 906 relating to RS khatian No. 748 and LR khatian No. 334/1 in the mouza Thalia. Ld. Advocate further submitted that LR plot Nos. 906 pertaining to LR khatian No. 334/1 is actually a devottor property recorded in the name of Sri Sri Jhareshwar Jew Thakur and Sri Sri Shib Thakur. He further submitted that the entire LR plot No. 334/1 was originally cultivated by bargadars Nandalal Majhi and Dulal Chandra Khara. Each of them used to cultivate half of the said plot exclusively. The said Nandalal Majhi subsequently died leaving behind the plaintiff and proforma defendant Nos. 9 to 15 as his legal heirs. After the demise of Nandalal Majhi it was agreed between his legal heirs that the plaintiff shall continue to cultivate the 'A' schedule property exclusively which the plaintiff continues to do till this day. The Ld. Advocate contended that even though the plaintiff and his father are bargadars yet they were issued any receipt by proforma defendant Nos. 3 to 8 regarding the share of the produce. Be that as it may, behind the back of the plaintiff, proforma defendants No. 2 to 8 sold the 'A' schedule property to defendant No. 1 namely Rasbehari Ram. Subsequently on 26.06.2019 defendant No. 1 came to the 'A' schedule property and threatened to dispossess the plaintiff from there, claiming that he has purchased the 'A' schedule property from the proforma defendants and he will not allow the plaintiff to cultivate the same any more. Even though the plaintiff informed the local PS about this incident yet no action was taken in the matter. Thus, finding no other alternative the plaintiff make necessary enquiries and they came to know on 01.07.2019 for the first time that proforma defendant Nos. 2 to 8 have unlawfully sold the 'A' schedule property to defendant No.1 vide a registered instrument being deed No. 50 of 2014 dated 02.01.2014 which forms the 'B' schedule of the present suit. Subsequently on 02.07.2019 the defendant No. 1 again came to the 'A' schedule property and tried to undo the tilling work done by the plaintiff for the purpose of preparing the 'A' schedule property for cultivation, but he was somehow prevented by doing so by the local people. It is the contention of the plaintiff that as a bargadar he is exclusively cultivating the 'A' schedule property which belongs to the aforesaid deities and in which defendant No. 1 has not acquired any right, title and interest what so ever with the unlawful execution of schedule 'B' deed which is an itself void and not binding upon anyone. In

support of his claim the plaintiff has filed the Internet copy of searching slip pertaining to LR khatian No. 334/1. The plaintiff has further claimed that he is apprehensive that in the near future also the defendant No. 1 will disturb his peaceful possession and would try to forcibly prevent him from cultivating the 'A' schedule 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 their right, title and interest in the 'A' schedule property. He, therefore, prayed for an order of temporary injunction against the defendant No.1, restraining him from disturbing the plaintiff from peacefully cultivating the 'A' schedule property till the disposal of the present suit.

On the other hand Ld. Advocate of the defendants submitted that the plaintiff has got no right, title, interest or possession in the suit property. They also denied that the plaintiff or his predecessors ever cultivated the suit property at any point in time. Ld. Advocate of the defendants contended that the defendants have exclusive right, title and interest in the suit property and that the plaintiff has got no cause of action to bring the present suit. Ld. Advocate therefore, submitted that the application for temporary injunction be rejected and the ad interim order dt. 06.07.2019 be vacated.

Heard the Ld. Advocates of the parties at length.

Perused the temporary injunction application as well as the documents furnished by the plaintiff like photocopy of the Internet searching slip LRROR relating to khatian No. 334/1 as well as the sale deed dated 02.01.2014. It is pertinent to mention here that the plaintiff did not file any document on the basis of which it could be concluded that he is a bargadar in respect of the 'A' schedule property. However, from the internet copy of the LR searching slip pertaining to the 'A' schedule property it is revealed that Nandalal Majhi i.e. the father of the plaintiff was in possession of the 'A' schedule property which was duly recorded in the name of Sri Sri Jhareshwar Jew Thakur and Sri Sri Shib Thakur. From the sale deed dated 02.04.2014 it is further revealed that it is this very 'A' schedule property which was transfer in favour of defendant No. 1 by the proforma defendants No. 2 to 8. After taking all these facts into account this Court is of the considered view that the plaintiff has made out a prima facie case which is fit to be tried by this Court. So, weighing the balance of convenience and inconvenience as well as urgency of the matter it is the considered view of this Court that an order of temporary injunction should be granted in favour of the plaintiff.

Hence it is,

ORDERED

That the application for temporary injunction filed by the plaintiff u/O 39 Rules 1 & 2 CPC is hereby allowed on contest. Defendant No. 1 is hereby restrained from disturbing the peaceful possession of the plaintiff over the 'A' schedule property in any manner till the disposal of the present suit.

The temporary injunction application is accordingly disposed of.

To 19.03.2020 for filing W/S by the remaining defendants without fail.

D/C by me

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

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