

Title Suit No. 138 of 2017 (CIS 150 of 2017)

Order No.44 dated 07.07.2025

Today is fixed for clarification and passing order.

Plaintiff filed hazira and prayed for extension of the ad interim injunction by filing petition.

Defendant Nos. 1,2 & 3 filed hazira.

This is the suit for declaration and injunction.

Plaintiff's case in a nutshell is that, the defendant is the owner and occupier in respect of the 'A' schedule noted suit property by way of purchase from one Sk.Motled Ali. The plaintiff submitted that the defendant due to his necessity of urgent cash money proposed the plaintiff on 02.08.2017 to purchase the 'A' schedule noted suit property at a total consideration price of Rs. 5 lakhs out of which on that day the plaintiff has paid a sum of Rs. 10,000/- as advanced money. Thereafter the plaintiff told the defendant to execute an agreement for sale in respect of the 'A' schedule noted suit property and the defendant also assured the plaintiff regarding the same. Thereafter, on repeated request of the plaintiff, the defendant tried to avoid to execute the agreement for sale in respect of 'A' schedule noted suit property. Thereafter, on 23.08.2017 the plaintiff through his appointed advocate sent one legal notice to the defendant and thereby requesting him to execute and register a deed of sale in respect of the 'A' schedule noted suit property after taking the rest consideration price. After receiving the said letter, the defendant execute one agreement for sale on 26.08.2017 in respect of 'A' schedule noted suit property after obtaining further sum of Rs. 1,90,000/- cash from the plaintiff, the details of the said agreement has been mentioned in schedule 'B' to the plaint. The plaintiff again requested the defendant to execute and register the 'A' schedule suit property after taking the rest consideration price thereof but the defendant always avoided on some various excuses to do the same. On 03.09.2017 the plaintiff came to know that the defendant is trying to sell out the 'A' schedule noted suit property by one third party by taking more consideration price and by suppressing the 'B' schedule noted agreement. Being compelled, the plaintiff on 04.09.2017 through his appointed advocate again sent one legal notice to the defendant showing his willingness and readiness for complying the terms and conditions of the 'B' schedule noted suit property. But on 13.09.2017 the defendant being associated with some antisocial came to the house of the plaintiff and threatened him not to take any steps and to forget about the 'A' schedule property otherwise plaintiff will be taught of good lesson. The defendant No. 1 violated the injunction order dated 18.09.2017 and transferred the suit property to the defendant Nos. 2 and 3 by virtue of the registered deed executed on 20.09.2017. Hence the plaintiff filed this instant suit and now prayed for an order of temporary injunction against the defendant, restraining him from transferring, alienating, encumbering the 'A' schedule noted suit property to any stranger person and for changing the nature and character of the suit property.

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Ld. Advocate for the defendant No. 1 raised vehement objection stating that the defendant No. 1 has never signed any bainanama which has been filed by the plaintiff. Moreover, in the advocate's letter the date of execution of the bainanama is not mentioned. The name of the defendant No. 1 is Manik Dolui and not Manik Ch. Dolui or Maniklal Dolui. The bank account, electricity bills all stands in the name of Manik Dolui. The defendant No. 1 never received any amount from the plaintiff. A bainama was executed on 17.08.2017 between the defendant Nos. 1,2 & 3 and defendant No. 1 received Rs. 1,50,000/- from the defendant No. 2. As such the defendant No. 1 executed a sale-deed in respect of the suit property on 20.09.2017 in favour of defendant Nos. 2 and 3.

Heard. Considered.

After perusal of the record it is seen that the bainanama filed by the plaintiff is unregistered. No date of execution is mentioned on bainanama and there is no signature of the plaintiff over the same. The plaintiff has stated that he has paid an amount of Rs. 2,00,000/- as an advance payment for execution of the sale-deed to the defendant No. 1. Be it mentioned here that there is no clarification as how the money was paid and there is no supporting evidence of the payment of the amount by the plaintiff to the defendant No. 1. Moreover there is no clarification as to whether the ad interim order of injunction dated 18.09.2017 was communicated to the defendant No. 1 before 20.09.2017 as because the postal receipt bears the date 19.09.2017 but there is a cloud as to whether the defendant No. 1 was aware of the passing of ad interim order of injunction dated 18.09.2017. Moreover the plaintiff is not in possession of the suit property.

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, it is found out that there is no prima facie case of the plaintiff, balance of convenience and inconvenience does not weigh in favour of the plaintiff. As such this Court is not inclined in allowing the injunction application. 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 rejected.

Hence, it is

ORDERED

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

To 25.08.2025 for C. Report.

D/c by me

CJ

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