

Title Suit 168/ 2018 (CIS - 168/ 2018)

CNR No. - WBHW07 000 of _____

Order No. 24 dated 05.04.2022

Today is fixed for passing order in connection with the application for temporary injunction filed by the plaintiffs under Order 39 Rules 1 & 2 C.P.C.

Both parties are present.

Record is therefore taken up for passing order.

A detailed hearing in respect of the application for temporary injunction was conducted on the previous date i.e. 05.03.2022. This Court has given due consideration to the submission made from either side while deciding upon the temporary injunction application.

It is the case of the plaintiffs that the suit property originally belonged to Nityananda Chakraborty who had "Mokorory Maurasi" right in the same after acquiring it on the basis of "Joma Bondobosto" in 1917. The said Nityananda Chakraborty sold the suit property to Monimohan Pakhak and Batakrisna Pathak on 31.05.1949 vide registered sale deed No. 5251 of 1949. The said Monimohan Pakhak and Batakrisna Pathak subsequently partitioned the suit property between themselves vide registered partition deed No. 8249 of 1953. Accordingly Monimohan Pathak became the exclusively owner of one half of the suit property while Batakrisna Pathak became the absolute owner of the other half of the same. Later on Monimohan Pathak sold his half share in the suit property to Upendranath Pal and Indranarayan Pal vide registered sale deed No. 6831 of 1969. In the same year Batakrisna Pathak also sold his half share in the suit property to Subal Chandra Pal vide registered sale deed No. 8195 of 1969. Later on, the said Upendranath Pal sold his half share in the suit property to Indranarayan Pal vide registered sale deed No. 6831 of 1969?. Thus in the aforesaid manner Indranarayan Pal and Subal Chandra Pal became exclusive joint owners of the suit property with each of them having half share therein.

The further case of the plaintiffs is that the said Indranarayan Pal and Subal Chandra Pal executed partition deed No. 1317 of 1980 along with Narahari Pandit (i.e. the predecessor of the defendants) who was a co-sharer in respect of the suit plots. The said Narahari Pandit was the first party of the said partition deed while Indranarayan Pal was second party No. 1 and Subal Chandra Pal was second party No. 2 therein. Under the said partition deed, Narahari Pandit was allotted the property described in the 'Kha' schedule of the same while Indranarayan Pal and Subal Chandra Pal were allotted the property described in the 'Ga' schedule therein. Thus, in the aforesaid manner the said Narahari Pandit became the exclusive owner of the 'Kha' schedule property allotted to him while the said Indranarayan Pal and Subal Chandra Pal became the joint owners in respect of the 'Ga' schedule property of the partition deed.

The said Subal Chandra Pal Subal Chandra Pal died leaving behind two sons namely Basudeb Pal & Korunamoyee Pal (i.e. plaintiff no. 1), who jointly inherited the share of their father in the suit property. Later on Basudeb Pal gifted his share to plaintiff nos. 2 to 4 vide a registered gift deed.

Only other hand, Indra Narayan Pal left behind three sons namely Gora Chand Pal (plaintiff no. 05), Asto Pal (Plaintiff no. 06) and Ananda Charan Pal @ Amar Charan Pal. The said Ananda Charan Pal @ Amar Charan died leaving behind his widow Anita Pal (Plaintiff no. 07), 04 sons namely Kartick, Chandan,

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Anup & Sagar (Plaintiff nos. 8 to 11) & two daughters namely Jhuma Pal (Plaintiff no. 12) and Soma Pal (Plaintiff no. 13).

It is the case of the plaintiffs that the defendants, who are the legal heirs of Narahari Pandit, are trespassers in relation to the suit property and have got no right, title, interest or possession in the same. The plaintiffs have claimed that on 26.07.2018 and 16.08.2018 the said defendants came to the suit property and tried to forcibly dispossess the plaintiffs from there but due to timely intervention of local people they were compelled to return back. However, before leaving the defendants openly threatened the plaintiffs that they will come again in large number very soon for forcibly dispossessing the plaintiffs from the suit property. The plaintiffs have contended that for the aforesaid reasons they have been compelled to file the present suit so that not only their right, title & interest in the suit property could be declared but also the defendants could be restrained by an order of temporary injunction from forcibly dispossessing plaintiffs from the suit property as well as from disturbing their peaceful possession of the same.

On the other hand the defendants have vehemently opposed the application from temporary injunction on the ground that the plaintiffs do not have any right, title or interest in the suit property. The defendant have claimed that the suit property is a Debottor of property Sri Sri Dharmaraj Thakur and in the C.S.R.O.R. pertaining in the same the names of Bhajahari Pandit, Narahari Pandit, Arjun Pandit & Kaminibala Dasi were recorded as Sebayet.

A further case of the defendants is that the said Bhajahari Pandit, Arjun Pandit & Kamini Bala Dasi all died issue less. The other Sebhayet namely Narahari Pandit, i.e. the predecessor of the defendants, died leaving behind three sons and three daughters upon whom the suit property devolved. The defendants have contended that Narahari Pandit acquired exclusive ownership of the suit property as the other three Sebhayets namely Bhajahari Pandit, Arjun Pandit & Kaminibala Dasi died issue less. Accordingly the R.S.R.O.R. relating to the suit property was exclusively recorded in the name of the said Narahari Pandit.

The defendants have gone on to claim that the current L.R.R.O.R. relating to the suit property is erroneous as it no longer shows the suit property as a Debottor property. Moreover, the name of Narahari Pandit has been recorded only to extend of 8 annas in place of 16 annas in the said L.R.R.O.R. The defendants have claimed that they have made necessary application before the concerned B.L.L.R.O. for the rectification of the L.R.R.O.R. relating to the suit property.

It has been further contended by the defendants that they were finding it inconvenient to jointly possess the suit property along with the other co-sharers therein for which reason defendant nos. 2 & 3 of this suit have instituted a partition suit being T.S. 284/2018 before the Ld. C.J.S.D. Uluberia. The defendants have further claimed that an ad-interim order of injunction has been passed in the said partition suit on 13.09.2018 against defendant nos. 1 & 2 of the said partition suit who are plaintiff nos. 1 & 6 in the present suit. The defendant have further contended that the said partition suit has been filed prior to the institution of the present suit and that they have duly sought a declaration in the said partition suit that deed nos. 2987/1947, 5251/1949, 6831/1969 & 8195/1969 be declared as none avoid.

In the present suit, the defendants have denied that the plaintiffs have any right, title, interest or possession in the suit property. They have also contended that the impugned deeds being deed nos. 5251/1949, 8195/1969, 6831/1969, 761/1996 & partition deed no. 1317/1980 on the basis of which the plaintiffs are claiming right, title and interest in the suit property are all none avoid. It is the

claim of the defendant that their predecessor Narahari Pandit never put his L.T.I. mark on the impugned partition deed no. 1317/1980 or the impugned sale deed no. 2987/1947. Rather, they have claimed that the predecessor of the plaintiff got a third person to impersonate the said Narahari Pandit and fraudulently put his L.T.I. mark on the aforesaid deeds by pretending to be the Narahari Pandit. The defendants have submitted that on the basis of the said forged deeds the plaintiffs or their predecessors never acquired any right, title or interest in the suit property. The defendants have, therefore, submitted that for this reason the plaintiffs are not entitled to get the relief of temporary injunction and their application for the same U/o 39 R 1 & 2 C.P.C. should be rejected in limini.

This Court has given due consideration to the submissions made from the side of the plaintiffs as well as the defendants. This Court has also taken into account the documents filed from either side. Besides this, the Court has also perused the application for temporary injunction filed by the plaintiffs, the W.O. thereto as well as the copy of the plaint of T.S. 284/2018 & the order of ad-interim injunction passed in the said T.S. by the Court of Ld. C.J.S.D. Uluberia. It is pertinent to mention here that the defendants have challenged the maintainability of the present suit on the ground that the suit property is allegedly Debottor property. On the other hand the plaintiffs are claiming right, title and interest in the suit property on the strength of some registered deeds including registered partition deed no. 1317/1980 in which the predecessor of the defendants namely Narahari Pandit was allegedly a party. However, it has been contended from the side of the defendants that the partition deed no. 1317/1980 is fraudulent as Narahari Pandit never put his L.T.I. mark on the said partition deed and that the L.T.I. mark affixed in the said partition deed has actually been put by some one impersonating Narahari Pandit. It is pertinent to mention here that the defendants of the present suit have not made any claims regarding the partition deed no. 1317/1980 in their T.S. filed before Ld. C.J.S.D. Uluberia being T.S. 284/2018. Be that as it may, it is the considered view of this Court that the claim of the defendants that the suit property is a Debottor Property can only be verified at the time of trial by taking cogent evidence. Moreover, the plaintiffs are claiming right, title and the interest in the suit property on the basis of several registered deeds most of which are more than 30 years old. Though the defendants have challenged the validity of the said registered deeds filed by the plaintiffs, at this stage it is not possible for this Court to come to a definite conclusion regarding the validity of the said deeds. Rather the validity of the said registered deeds can only be verified at the time of trial with the aid of cogent evidence. It is also the considered view of this Court that the commencement and conclusion of the trial of the present suit will take considerable time. Till such time it is imperative that the interest of the parties in the suit property and the suit property itself should be preserved and protected till a final adjudication is made in the present suit.

From the averments made in the plaint as well as the statements made in the application for temporary injunction, it is apparent that a prima facie case has been made out by the plaintiffs which is fit to be tried by this Court. Moreover the balance of convenience and inconvenience is also found to lean in favour of passing an order of temporary injunction for the protection and preservation of the suit property and the interest of the parties therein. Therefore, in view of the urgency involved in the matter and after taking into consideration all the facts of the present suit, this Court is inclined to allow the application for temporary injunction filed by the plaintiffs.

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Hence, it is

ORDERED

that the application for temporary injunction filed by the plaintiffs U/o 39 R 1 & 2 C.P.C. is hereby allowed on contest. Both parties are directed to maintain status quo with regard to the nature, character & possession of the suit property as on this day till the disposal of the present suit.

The application of temporary injunction is accordingly disposed of.

To 02.07.2022 for framing of issues.

D/C by me

C. J. (Jr. Divn.)
Amta, Howrah
(JO Code WB 01195)

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