

Order no.19 dated 25.02.2016

Today is fixed for hearing of injunction petition u/O 39 Rule 1 & 2 read with Section 151 of C.P.C.

Both parties files hazira.

Now the record is taken up for hearing and passing necessary order.

The suit property originally belonged to Bishnupada Roy who died leaving behind his three daughters namely Alpana Bhattacharya, Arati Roy and Chaity Chatterjee. Thereafter while owning and possessing the suit property said three daughters of Bishnupada Roy transferred 8 - 5/6 decimal land and 5 decimal land to the plaintiff by dint of two separate registered deed of sale being no. 4888 and 4889 dated 24.09.1988. Although the plaintiff has purchased the suit property but the property measuring 8 - 5/6 decimal land has been executed in the name of plaintiff and his brother, defendant no.1. And the property measuring 5 decimal of land has been executed in favour of Satyaranjan Ghosh, the father of the plaintiff. The suit property from its very inception that is from its purchase is possessed by the plaintiff till date by constructing dwelling house upon the land measuring about 8- 5/6 decimal and by constructing shops upon the said 5 decimal land. Thereafter, land measuring about 1- 3/5 decimal has been sold by the plaintiff from the land measuring about 5 decimal and the deed was executed by the father of the plaintiff as he is benamdar owner. The plaintiff therefore inducted the tenants upon the said shop constructed by him and started receiving the rent thereof from the tenants. Thereafter, as per the family arrangement, the defendant no.1 transferred his share measuring about 4- 5/12 decimal land to the plaintiff on 05.11.2010 by dint of registered deed of gift being no. 20. In the above, the plaintiff has got the entire 8- 5/6 decimal land in the suit property. By dint of said family arrangement the father of the plaintiff has made a deed of gift of the properties of Mallik Chak Mouja in favour of defendant no.1 and promised the plaintiff that he will execute a deed of gift in his favour in respect of the remaining share that is 4- 5/12 decimal land. But the father of the plaintiff did not execute any such deed in favour of the plaintiff. Thereafter, on 12.01.2013 said Satyaranjan died leaving behind the plaintiff and the defendants as his legal heirs. On 01.09.2013 one of the tenants namely Abhijit Bhandari disclosed that he would not pay any rent to the plaintiff as because he has already paid the rented money to the defendant no.1. On the very next day on asking the defendant no.1 disclosed that the 'ka' schedule property has been transferred to him by his father and he would forcefully possess the suit property. On 13.09.2013 the plaintiff obtained the certified copy of registered deed of gift and came to learn that by practicing fraud upon his father the defendant executed an illegal, invalid deed of gift in his favour in respect of 'ka' schedule property. The plaintiff submitted that the deed was prepared at

Amta and the stamp duties were also purchased at Amta but the deed was registered at Pacharul Samontonagar Sub-registry Office. The plaintiff submitted that the impugned gift deed is void, illegal and executed by practicing fraud upon the donor and the deed was not acted upon till date, the plaintiff is in the possession of the 'ka' schedule property. Hence the plaintiff filed this instant suit and prays for injunction.

On the other hand the defendant by filing written objection on 13.03.2014 contested the injunction petition and denied the averment of the petition. The defendant in their written objection stated that said Satyaranjan Ghosh purchased the said property measuring about 8- 5/6 decimal and 5 decimal on 24.09.1988 vide registered sale deed no. 4888 and 4889 in the names of Kalikinkar Ghosh and Kamolesh Ghosh and Satyaranjan Ghosh respectively. Kalikinkar Ghosh, the defendant no.1 later on made a registered deed of gift in respect of his share in the name of plaintiff for a plot of land measuring about 4- 5/12 decimal. Satyaranjan Ghosh subsequently sold 1- 3/5 decimal to some other person and retain the balance in his own name. Subsequently, the said Satyaranjan Ghosh made a deed of gift in favour of defendant no.1 vide deed no. 1586 in the year 2012 in respect of his remaining share that is 'ka' schedule property. The Ld. Advocate for the defendant stated that, said Satyaranjan Ghosh himself was an experienced deed writer and drafted gift deed in his own handwriting describing the misbehavior of the plaintiff. The defendant further stated that said Satyaranjan Ghosh constructed six rooms and staircase out of his own money and inducted tenants and two shop rooms and realized monthly rents from them. That said Satyaranjan Ghosh file an eviction suit being no. 70 / 2003 against the tenant namely Pankaj Ghosh for non-payment of monthly rent of the said eviction suit was decreed by the Ld. Court. Defendant further stated that the deceased Satyaranjan Ghosh allowed sri Priankar Ghosh son of the plaintiff to use one room for his business purpose only from 02-01-2010. The defendants further submitted that the story of family arrangement is absolutely false and the father of the defendant used to collect monthly house rents as matter of rights. That deceased Satyaranjan Ghosh executed the impugned gift deed with his full knowledge and senses. Hence the injunction petition filed by the plaintiff is liable to be dismissed.

Now, it has been held through various judicial pronouncements that while considering petitions of this nature the court should take note of the following ingredients, namely prima facie case, balance of convenience and inconvenience and irreparable loss.

I have perused the case record, injunction petition and written objection and other materials available on record very carefully. On such careful perusal it appears that the main disputes is regarding the Ka schedule property. Now in my humble opinion, at the time of adjudication of injunction petition the court is to see first whether the plaintiff has successfully make out any prima

facie case in his favour entitled to go for trial. In the instant suit plaintiff asserts that he has purchased the suit property but the lands measuring about 8 - 5/6 has been executed in the name of plaintiff and his brother, the defendant no.1. and the property measuring 5 decimal land has been executed in favour of Satyaranjan Ghosh, the father of the plaintiff but in my considered view the plaintiff/petitioner prima facie failed to satisfy the court to believe this fact by placing any document regarding this fact. On the other hand the defendants filed L.R. information slip of dag no. 711, in which it is found that the name of Satyaranjan Ghosh was recorded in respect of 2 decimal land vide khatian no. 964/1 and the deeds being no. 4888 and 4889 dated 24-09-88 also prima facie corroborates the defendant's contention . The impugned deed of gift being no. 1586 dated 28-08-12 is a registered document and in my considered view court should give reliance upon this document unless it is proved to be void document. On perusal of the documents and hearing the submissions of both the parties, I think that whether any family arrangement was made in between the parties during life time of their father is a matter of evidence and no definite conclusion can be arrived at this interlocutory stage.

In view of above discussion and considering the materials prima facie available on record this court is of the view that petitioner is failed to make out a prima facie case in his favour. Moreover I am of the view that the defendant may suffer more harm than the plaintiff if the injunction order is passed against him, hence the balance of convenience and in convenience lies in favour of the defendant.

Hence, it is,

**ORDERED**

That the prayer of the plaintiff for temporary injunction under order 39 rule-1 read with section 151 CPC, is considered and rejected on contest.

Fix                    for framing of issues.