

Order no. 27 , dated 19.02.2016

Today is fixed hearing of petition for injunction under Order 39 Rule 1 and 2 read with Section 151 of the C.P.C.

Both parties files hazira.

The petition is taken up for hearing.

The case of the plaintiff in short is that the suit property previously belonged to Dharanidhar Dey, Taranikanta Dey and Makhanlal Dey, after death of Dharanidhar his legal heirs have inherited 1/3rd share of their predecessor. Thereafter heirs of Dharanidhar Dey, Taranikanta Dey and Makhanlal Dey executed a registered Sale deed bearing no. 2569 for the year 1941 in favour of plaintiffs' predecessor Govindacharan Chakarborty. Thereafter on the death of Govindacharan Chakarborty plaintiffs have inherited the property and accordingly possessing the property. The principal defendants on 21.01.2014 came to the suit property and threatened that they will forcefully possess the suit property. On inquiry, the plaintiffs came to know that in L.R. Record of rights the suit property is recorded as 12 decimal instead of 9 decimal and the 12 decimal properties is recorded in the name of Govindacharan Chakarborty and predecessor of defendant nos. 4 to 7. The principal defendants again on 15.02.2014 tried to dispossess the plaintiffs from the suit property. For these reasons the plaintiffs have filed this instant suit and now praying for an order of injunction.

On the other hand defendant no. 4 to 8 by filing written objection raised vehement objection against the instant petition. The defendants submitted that one Manik Lal alias Manik Chandra Chakraborty the predecessor of the plaintiffs as well as this answering defendants was the original owner & possessor in respect of the suit property and his name has been duly recorded in the C.S. record under Khatian No. 169. The name of Dharanidhar dey & others has been recorded as possessor. While owning and possessing the same, said Manik Lal alias Manik Chandra Chakraborty died leaving behind his two sons namely Gobinda Charan Chakraborty and Madhusudan Chakraborty. That at the time of R.S. operation the name of other possessor has been deleted lawfully and the name of legal heirs of the original Jamindar has been recorded in L.R. khatian No. 65 and 218. Gobinda Charan Chakraborty died leaving behind him the plaintiffs as the legal heirs and Madhusudan Chakraborty died leaving behind him the defendant no. 4 to 8. The defendant further submitted that in the year 1941 the said Manmath Dey, Tarani Kanta Dey & others have no right to transferred the suit property, as such the said deed, vide no. 2569 for the year 1941 is not binding upon the defendant and it is also inactive, inoperative and illegal one.

On perusal of C.S. record of rights and the sale deed filed by the plaintiffs, it appears to me that the heirs of Dharanidhar Dey, Taranikanta Dey and Makhanlal Dey executed a registered Sale deed bearing no. 2569 for the year 1941 in favour of plaintiffs' predecessor Govindacharan Chakarborty. The pleadings of the plaintiff and the documents as filed by him successfully advertise a prima facie case and they also manifest a good arguable case to go to trial. As far balance of convenience and inconvenience is concerned, the documents on record prima facie suggest that the

plaintiff's case has material in it. The plaintiff by producing the registered Sale deed bearing no. 2569 for the year 1941 make out a prima facie case in his favour.

Now, hearing the submissions of both the parties whether the heirs of Dharanidhar Dey, Taranikanta Dey and Makhanlal Dey had any title to execute a registered Sale deed bearing no. 2569 for the year 1941 in favour of plaintiffs' predecessor Govindacharan Chakarborty is a matter of evidence and no definite conclusion can be arrived at this interlocutory stage. But in either of the capacity, the defendants has no right to change the nature and character and threat the plaintiffs and should not have the liberty to disturb the plaintiff in his peaceful possession of the suit property.

Apart from that if an order of injunction would not be passed then the plaintiffs will suffer irreparable loss and injury.

Hence it is,

ORDERED

That the petition for injunction is hereby considered and allowed on contest without any cost.

That the ad-interim injunction is hereby made absolute.

Plaintiffs and defendant nos. 1 to 8, both are directed to maintain status-quo regarding nature, character and possession of the 'ka' schedule property, as it stands today, till disposal of the suit.

Fix for framing of issues.

D/C by me

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

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