

T. S. 725 of 2022
WBSPOE00101722

Order No.08
Dt.01.08.2023

Today is fixed for hearing of the injunction application.

Plaintiff, defendant no. 1 to 9 file hazira.

Plaintiff also filed extension petition of ad interim order.

Plaintiff's case is that the suit property originally belonged to Kanchan Kumar Peyada who transferred the same in favour of plaintiff by virtue of sale deed no. 1605 of 1994 and delivered possession. Accordingly name of plaintiff recorded in LRROR bearing khatin no. 1041. Further stated that plaintiff is an illiterate lady and the predecessor of defendants namely Nirapada Sardar and Chittaranjan Sardar misrepresented plaintiff to execute power of attorney in their favour to look after the suit property but they procured gift deed (mentioned in "kha" scheduled) in their favour. Defendants are legal heirs and successors of Nirapada Sardar and Chittaranjan Sardar and on basis of alleged gift deed trying to dispossess plaintiff from suit property. Plaintiff claims that she never execute any gift deed in favour of Nirapada Sardar and Chittaranjan Sardar and alleged deed procured by fraud, undue influence and misrepresentation. Plaintiff came to know about the alleged deed on 03.11.2022 when defendants disclosed plaintiff that she executed gift deed in favour of Nirapada Sardar and Chittaranjan Sardar on 11.03.2014.

In the above facts and circumstances the plaintiff prayed for a temporary order of injunction restraining the defendant no. 1 to 6 from disturbing peaceful possession of the plaintiffs over the "ka" schedule suit property and/or from changing nature and character of the "ka" schedule suit property and/or from dispossessing plaintiff from "ka" schedule suit property and from alienating "ka" schedule suit property in favour of

third party till disposal of suit.

The defendants filed written objection against the said application for injunction and denied each and every allegation of the plaintiff. It is further stated that plaintiff was owner and possessor of the suit property and her name recorded in LRROR bearing khatian no. 1041 and she is widow having no issues and used to reside with her brothers namely Nirapada Sardar and Chittaranjan Sardar . Further stated out of love and affection for brother she executed gift deed in their favour and by complying all formalities knowing about execution of gift deed. Accordingly name of Nirapada Sardar and Chittaranjan Sardar recorded in LRROR bearing khatian no. 1745 & 1182. Nirapada Sardar died leaving behind defendants as legal heirs and successors and defendants are paying taxes and other outgoings. Plaintiff never raised any objection during lifetime of Nirapada Sardar and Chittaranjan Sardar and after demise file the false suit. Hence prays for rejection of injunction application with cost.

Heard Ld. Counsels for plaintiff, defendant no. 1 to 6 in full. Perused the record and documents carefully. Considered.

From the materials on record it appears that the major contention of the plaintiff has been that the deed of gift being no.1014 of 2014 is procured by fraud, undue influence and misrepresentation. The plaintiff further submitted that the she is an literate lady and therefore the L.T.I. in gift deed was procured by misrepresentation that under impression that she is executing power of attorney in favour of her brothers though she did not know about the alleged gift deed. The predecessor of defendants have procured gift deed by fraud, undue influence and misrepresentation because if she know about execution of gift deed she had never put LTI upon the same and also it was not read over and explained to her. Even

though the defendants have denied the material allegation of the injunction application and produced original gift deed no. 1014 of 2014, LRROR recorded in name of Nirapada Sardar and Chittaranjan Sardar, tax receipts. On the other hand plaintiff filed GDE's, LRROR, tax receipts. The defendants admitted the fact that the plaintiff was the owner and possessor of the suit property. From documents it appears that predecessor of defendants got 7.25 decimals of land in the suit dag whereas plaintiff claims 8.25 decimals of land in the suit dag, which shows that entire land was not transferred in favour of predecessor of defendants which means plaintiff is also in possession over some portion of the land over the suit dag.

Now as per defendants out of love and affection, plaintiff for her own desire instructed the scribe Pankaj Kumar Sardar to prepare a deed of gift in favour of two brothers and after drafting it was read over and explained by Pankaj Kumar Sardar to plaintiff. Prima facie from impugned gift deed this Court does not find that the gift deed was read over and explained to the plaintiff by Pankaj Kumar Sardar and also it appears that plaintiff put her LTI upon the deed. So prima facie it appears that the plaintiff is an illiterate lady. Now whether the plaintiff executed gift deed out of love and affection or it was procured by fraud, undue influence and misrepresentation can not be ascertained at this stage and it will only be determined after taking evidence of both sides.

For the time being it appears that deed of gift is in the name of the predecessor of defendants and if defendants change nature, character, possession or alienate "ka" schedule suit property then the purpose of the suit may be frustrated and the plaintiff may suffer irreparable loss and injury.

Hence,

Ordered

that the instant injunction application be and the same is hereby allowed on contest without costs.

The defendant no. 1 to 6 are hereby directed not to dispossess plaintiff from suit property, also not to transfer 'Ka' scheduled property of plaintiff in favour of any person and also not to change nature and character of the suit property till the disposal of the suit.

Thus, the application under Order 39, r. 1 & 2 of the C.P.C. read with Section 151 of the C.P.C. as well as extension are disposed of.

Fix 19.09.2023 for framing of issues.

D/C by me,

Sd/- A.Sharma
Civil Judge(Jr. Div.), 3rd Court,
Baruipur, South 24 Parganas.

Sd/- A.Sharma
Civil Judge(Jr. Div.), 3rd Court,
Baruipur, South 24 Parganas.
J.O. Code WB01411