

P.S- 304/2021

Reg. No. 304/2021

Order No. 10 Dated 04.01.2024:-

Today is fixed for injunction hearing and S/R upon defendant nos. 2 and 3.

No S/R is received till date.

Both plaintiff and defendant no. 1 are present by filing hazira.

The record is taken up for hearing of injunction petition.

Learned Advocates for both sides are present.

On perusal of the materials on record, it appears that the Plaintiff's case, in short, is that one Kangali Sk was the owner of the suit property. He died leaving his wife- Sakiran Bewa, two sons- Ibrahim Sk and Samser Ali, who in turn inherited 02 annas, 08 annas and 08 annas share respectively in the suit property. Thereafter, on the demise of the said Ibrahim Sk, his share devolved upon his mother- Sakiran, widow- Momejan Bewa and son- defendant no. 1. Thereafter, while owning and possessing 03 annas 03 gondas 01 kora 01 kranti share in the suit property, the said Sakiran Bewa died leaving behind Samser Ali as her only legal heir. The said Samser Ali thereafter married Momejan Bewa- the widow of his deceased brother. Out of their wedlock, the plaintiffs were born. Thereafter, the said Samser Ali died leaving behind his wife- Momejan Bewa and three sons- plaintiff nos. 1-3, who in turn inherited his share in the suit plot. The said Momejan Bewa thereafter, died leaving behind the plaintiffs and defendant no. 1- four sons, who in turn inherited her share in the suit property. In this way, plaintiffs together have 11 annas 07 gondas 02 kora and 01 kranti share in the suit property. It is averred by the plaintiff that they are possessing the suit property in ejmali with the principal defendant no. 1. As the defendant no. 1 is trying to make construction over the best portion of the suit property exceeding his share in the suit property, the plaintiffs approached the defendant no. 1

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for amicable partition but in vain. As such, in case the defendant no. 1 gets successful in his effort, the plaintiffs will suffer irreparable loss and injury. Accordingly, the plaintiffs have prayed for an order of temporary injunction against the principal defendant no. 1.

The Defendant no. 1 appeared and contested the application by filing written objection denying all material allegations. He had contended that one Sakiran Bewa executed oral heba in favour of her grandson- Sader Ali and thereby transferred ½ of her share to him. LRROR got recorded in the name of Sader Ali in respect of 08 annas share in the suit property- i.e., the share got by him by way of inheritance from her father and by way of oral heba got by him from Sakiran Bewa. As such, he is claiming that the plaintiffs being the sons of Samsar Ali has now filed the instant suit falsely and hence, has prayed for dismissal of the instant application.

Heard Learned Advocates of both sides.

Perused the pleadings, petition, written objection, documents filed by the parties and other materials on record.

From the documents filed by the plaintiffs and other materials on record, it prima facie appears that it is admitted position that both the plaintiffs and the defendant no. 1 have shares in the suit property and is possessing the same in ejamli. It is to be mentioned here that the dispute regarding the quantum of share of either parties in the suit property is to be determined at the stage of trial after appreciating evidence of both sides.

In these circumstances, it appears to this Court that the plaintiff has strong prima facie case to be proceeded with.

Has it been so, from the point of balance of convenience and inconvenience and hardship, save and except an order of status quo as

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regard existing nature, character and possession of the suit property, of course with some specific direction, as may be formulated below, any other order may cause hardship to either side thereby leading to irreparable damage to either parties and may lead to multiplicity of proceedings.

Hence it is,

ORDERED

that the application for temporary injunction is hereby disposed off on contest without cost.

Both the parties are hereby directed to maintain status quo as regard the existing nature, character and possession in the suit property and save and except repairing works only in the existing construction within their respective portion in possession but shall not make any new construction over the vacant portion of the suit property till the disposal of the suit.

To 05.02.2024 for S/R of proforma defendant nos. 2 and 3 and framing of issues.

Plaintiff is directed to take fresh steps upon proforma defendant nos. 2 and 3 at once.

Dictated & Corrected by me.

C.J (Sr. Divn.), Lalbagh, Msd.

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