

Order no.:22; Dated:30/08/2019:

Today is fixed for hearing of petition seeking temporary injunction. Heard both sides at length. The said application is now taken up for passing order.

The case of the plaintiff-petitioner in brief is that one Rabeya Khanam was the original owner of 'ka' schedule property falling under Basudebpur Mouza of Raghunathganj P.S. and she breathed her last in the year 2014 leaving behind her three sons who have been arrayed as the plaintiff, O.P. no. 1 and proforma O.P. no. 3. On 14/02/2012 Rabeya Bibi executed a hebanama^{nama} favouring O.P. no. 1 pursuant to which he received 'ka' schedule property. The plaintiff and the O.P. no. 1 are brothers and it was decided in between them that the plaintiff would execute a hebanama favouring the O.P. no. 1 as per the arrangement that one lay out plot would be carved out of dag no. 471 and one space measuring 7 ft x 13 ft. ^{extending from} east-west would be used by the plaintiff-petitioner during his entire lifetime which would not be objected upon by the

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O.P. no. 1 and if sometime in future any two storied building is constructed, the O.P. would be able to use the space and the water pipe as well as the drain extending from east to west which would be put to use by the plaintiff-petitioner. As the plaintiff-petitioner and the O.P. no. 1 mutually agreed upon the arrangement, the plaintiff executed one hebanama favouring the O.P. no. 1. On 08/08/2018 the O.P. no. 1 declined to honour the commitments made by him with regard to the aforesaid arrangement and pursuant to the same the plaintiff-petitioner obtained the certified copy of the said deed on 09/08/18 and he was surprised to find that all those stipulations which were mutually agreed upon by the plaintiff-petitioner and the O.P. no. 1 had been struck off in the said deed and the plaintiff-petitioner submits that he has never instructed the O.P. no. 1 to delete these stipulations which bear the endorsement of the O.P. no. 1 only and not the plaintiff-petitioner. The plaintiff-petitioner contends that the said deed is not binding upon him and all those mutually agreed stipulations have been excluded from the said deed keeping him in dark. The O.P. no. 1 who is aspiring to get the said deed acted upon brought about that deed in a collusive manner and as such, the said deed is a void one. The plaintiff-petitioner has prayed for restraining the O.P. no. 1 by issuing an order of ^{temporary} ~~ad-interim~~ injunction thereby preventing the latter from disturbing the peaceful possession over the suit property.

For buttressing his claim the plaintiff-petitioner has preferred the certified copy of hebanama bearing no. 967/12. Perused the same.

The O.P. has contested the instant application by preferring a written objection wherein he has negated the contentions of the plaintiff-petitioner and has also challenged the very maintainability of the instant application. It is his positive case that Rabeya Khatun @ Rabeya Khanam had been enjoying possession of 5 decimals of property by an amicable settlement alongwith 2 decimals of property which was used as a common road and she had effected a registered deed of partition on 13/02/1960 and her such stake was duly published by virtue of L.R. ROR bearing no. 865. She was already in possession of 13 decimals of property which she got sub divided into different sub plots and had prepared a sketch map with regard to that. She transferred some of such sub plots favouring the plaintiff-petitioner and the son of

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defendant no. 3 as well as favouring her two minor grandsons named Asim Raja and Sahil Ansari. Next, she decided that she would transfer the property as indicated under sub plot no. 17 favouring the O.P. no. 1 which she had earlier transferred favouring the plaintiff-petitioner and in lieu of the same, she would present the plaintiff-petitioner with sub plot no. 5 while sub plot nos. 6, 9, 10, 11, 12 and 13 would be transferred favouring the defendant no. 2 who is the son of O.P. no.1. She then executed one hebanama bearing no. 962/2012 to that effect whereby sub plot no. 5 containing 1 decimal of property was transferred favouring the plaintiff-petitioner. As per the agreement that they had, Rabeya Khanam and the plaintiff-petitioner transferred the same favouring the defendant nos. 1 and 2 by executing a registered hebanama bearing no. 967/2012. He further contends that while typing the said deed the typist had typed some inappropriate words thereon which also got printed on the stamp paper. After obtaining print out of the said deed, Rabeya Khanam read over its contents before the attesting witnesses and upon hearing the same Rabeya Khanam and the plaintiff-petitioner together instructed the concerned Advocate to strike out those portions which was complied by the said Advocate and then the plaintiff-petitioner and Rabeya Khanam put their respective signatures on the said deed in presence of the witnesses. The said deed was registered on commission and both the original deeds have all along been lying with the plaintiff-petitioner. The property which the defendant nos. 1 and 2 received by virtue of this deed was recorded in the form of L.R. ROR bearing nos. 4460 and 4462. Upon being asked by the O.P. no. 1 to hand over the original deed of gift bearing no. 967/12, the plaintiff-petitioner kept on buying time on one pretext or the other and lastly informed him that he was unable to trace out the said deeds. The O.P. was thus, compelled to obtain the certified copies of the same and filed the same in Court. That apart, on 30/07/18 the O.P. no. 1 received a notice from the Office of the S.D.O., Jangipur, in connection with the proceeding and upon enquiring about the same, got to know that the said proceeding had been instituted by the plaintiff-petitioner on the strength of the deed of gift bearing no. 967/2012. It was just after few days of receipt of this notice that the O.P. received the notice in connection with the instant suit. The O.P. contends that the plaintiff-petitioner

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had completely suppressed the fact of his institution of a proceeding before the S.D.O., Jangipur. According to him, the property conveyed through this deed favouring him is in his possession where he has constructed two shop rooms of which he has let out one while the other is utilized for carrying of business by his son. The O.P. has ultimately prayed for rejection of the instant application. For buttressing his claim, Ld. Counsel representing the O.P. no. 1 has preferred the case law as reported in **2019 (2) ICC 209 (SC)** for the Court's consideration. The O.P. has also preferred the certified copies of both the deeds of gift bearing nos. 962/2012 and 967/2012. That apart, he has also preferred the photocopy of the notice as well as the accompanying document thereof which he received from the Public Grievance Redressal Cell of the Office of S.D.O., Jangipur.

Upon consideration of the factual matrix it appears that the impugned deed which has been described in the instant suit as 'kha' schedule property was executed way back in the year 2012 and the said deed involves plaintiff-petitioner as one of the donors alongwith his mother Rabeya Khanam. The plaintiff-petitioner has contended that the mutually agreed stipulations in between him and the O.P. no. 1 has been struck off the said deed and it bears the only signature of the other donor who is none other than his mother. From the averments of the written objection preferred by the O.P. no. 1 it appears that yet another deed of gift had been executed the same being numbered 962/2012 and even the said deed bears evidence of some recitals being struck off and even the said portion contains the signature of Rabeya Khanam only. Moreover, the plaintiff-petitioner has not denied having instituted a complaint before the Public Grievance Redressal Cell of the Office of S.D.O., Jangipur on 08/03/18 and the letter of complaint accompanying the same does bear reflection of the alleged occurrence of deletion of some stipulations in the deed of gift. It is the plaintiff-petitioner's contention that he has come to know about this alleged deletion on 09/08/18, ^{as the date of ascertainment of cause of action} but this date which he has indicated is opposed to his claim as reflected in the letter of complaint preferred before the S.D.O., Jangipur. ^{Further more} Moreover, it appears that the defendants are also in possession in the suit property as reflected from the L.R. RORs submitted by them. It is all the more difficult to fathom that when a document has been

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properly executed and registered, such a plea would be raised after the lapse of about six years from the date of registration. The alleged fact of causing deletion of these stipulations in this deed is one which can be decided only after adducing of evidence and this constitutes a triable issue. It is improper to drive home any presumption with regard to the said act at this interlocutory stage. Thus, I feel that the plaintiff has failed to establish a prima facie case in his favour. As the concerned deed was registered way back and since the plaintiff-petitioner seems to be well aware of the concerned alleged deletion prior to the date of alleged accrual of cause of action, he has equally faltered in establishing the other ^{two} requirements governing grant of temporary injunction. Consequently, ***the prayer for temporary injunction stands rejected on contest.***

D/c by me.


Civil Judge (Jr. Divn.), 1st Court,
Jangipur, Murshidabad.


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