

Order no.:39; Dated:30/09/19:

Today is fixed for delivery of order with regard to the application seeking temporary injunction. O.P. nos 1 and 2 have preferred a written objection to the application seeking temporary injunction. Let the same be kept with the case record. Heard Ld. Counsels of both sides at length. The application seeking temporary injunction is now taken up for passing order.

The case of the plaintiff-petitioner in brief is that he is the owner of the suit property corresponding to Sidhori Mouza under Suti P.S. and this property during C/S settlement was recorded in favour of Umar Mondal and others by virtue of C/S ROR no. 46 and they are also the owners of property comprising 2 acres 42 decimals. As they failed to pay the land revenue of this entire landed property, a suit bearing no. 580/1937 was instituted against them which was decreed against Umar Mondal and others and the property corresponding to 18 acres 46 decimals was put on auction sale which was purchased by this plaintiff-petitioner by participating in the said auction sale. Since the plaintiff-petitioner was a minor at the relevant time his mother Sefarunnesa Bibi purchased the property on his behalf as his guardian and she was delivered possession on 30/05/1941. Since then the plaintiff-petitioner has been in possession of the said property and he has been regularly paying land revenue and his property has duly been recorded in his favour vide L.R. ROR no. 1394. The principal O.Ps happened to be the legal heirs of C/S tenant Dokori Mondal but in spite of being well aware of the fact that they do not possess any right, title and interest over the suit property they have started disturbing the possession of plaintiff-petitioner merely relying upon the inclusion of name of their predecessor-in-interest Dokori Mondal recorded in C/S ROR no.

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46. The O.Ps are even attempting to sell off a portion of the suit property to some anti-socials and consequently, a threat of breach of peace looms large. Moreover, if the plaintiff-petitioner is not accorded some interim protection, he would be put to irreparable loss and it might even give rise to multiplicity of proceedings.

For buttressing his claim the plaintiff-petitioner has preferred the certified copy of certificate of sale of land in connection with the auction sale pertaining to case no. 628/40, L.R. plot information of plot nos. 318, 334, 729, 1714, 1893, 1824, 1829, 1841, 1846 of Sidhori Mouza as well as the certified copy of R.S. ROR bearing no. 46 of Sidhori Mouza. Perused the same.

Ld. Counsel representing the plaintiff-petitioner while participating hearing has argued that C/S ROR has been admitted by the O.P.s as evident in para 10 of W/S and it reveals therefrom that the father of Firon, Janab and Subejan was dead during C/S operation as they had 'inherited' the same. He has also argued that had the plaintiff-petitioner not been in possession, R.S. ROR would not have been published favouring his stake and the same has gone unchallenged. He has also reasoned with the Court that otherwise R.S. ROR must have been prepared favouring the O.P.s. The O.P.s have not challenged the sale by Court and the suit property does not involve properties which are described as 'jordang'. He has prayed for allowing his application seeking temporary injunction.

The O.P.s have contested the instant application by preferring a written objection wherein they have challenged the very maintainability of the instant application on multiple counts. That apart, the plaintiff-petitioners have no prima facie case. They contend that plaintiff-petitioners had preferred one suit bearing no. T.S.-100/2004 arraying the self same defendants before this Court and they could well have prayed for this relief in that very suit and as such, the instant suit is barred under Order II Rule 2 of C.P.C. It is their contention that the suit land originally belonged to Firon Mondal, Janab Mondal and Subejan Mondal who inherited the same from their father Kudrat Mondal. Janab

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Mondal died leaving his son Umar Mondal who inherited the former. Thereafter, Subejan Mondal died leaving behind three sons named Osman Mondal, Asgar Mondal and Ismail Mondal and his wife Sahiman Bibi who inherited the stake left behind by Subejan Mondal. Firon Mondal died leaving behind two sons Dokori Mondal and Ekori Mondal and his wife Jeledon Bibi. Ismail Mondal died leaving behind his three sons named Rahim Box Mondal, Saijuddin Mondal, Naijuddin Mondal and wife Mohorjan Bibi. They contend that the names of Umar Mondal and the names of heirs of Ismail Mondal, Subejan Mondal and Firon Mondal have duly been recorded in L.R. ROR and they are in possession. According to them, as Umar Mondal possessed profound knowledge in property affairs he was entrusted by his cousin brothers named Dokori Mondal, Ekori Mondal, Jeledon Bibi as well as the heirs of Subejan Mondal for payment of rent to the landlord by providing him with the money, but he willfully defaulted making such payment as a result of which the property was put into auction sale by the ex landlord. Even then Dokori Mondal, Ekori Mondal, heirs of Subejan Mondal and Ismail Mondal handed over money to Umar Mondal for setting aside the auction, but he allegedly purchased the suit property favouring his son with the money handed over to him by Dokori Mondal, Ekori Mondal, heirs of Subejan Mondal and Ismail Mondal by participating in auction. However, Dokori Mondal, Ekori Mondal, heirs of Subejan Mondal and Ismail Mondal were under the impression that the said auction had been set aside and they continued to possess the suit land during their lifetime. Unfortunately their names had been named as licensee and forceful occupiers while they ought to have been recorded as owners being in possession of 18.36 acres of land corresponding to C/S ROR bearing no. 46 of Sidhori Mouza. That apart, the O.P.s alleged that the plaintiff-petitioners did not get possession of suit land as contemplated under Order XXI Rule 95 C.P.C. and as such, its possession has all along been retained by C/S tenants and after their death by their heirs including the defendants and the sons of Ekori Mondal who had not been

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impleaded as parties in this suit. It is yet contended that the O.P.s have been possessing the suit land by undertaking cultivation since the time of their predecessors for more than 100 years on payment of annual rent to the State and as such they have acquired good title in the suit land by adverse possession too. Moreover, they have planted paddy on the suit land this year barring plot no. 1846. They had prayed for rejection of the application seeking temporary injunction. In support of their contention, they have preferred the case laws as reported in ***AIR 1995 Madras 125, AIR 1974 Cal 284, AIR 1987 SC 1443, AIR 2005 Andhra Pradesh 449, 2016(1) WBLR (SC) 436 & AIR 1968 SC 954.***

Ld. Counsel representing the O.P.s has submitted that the auction sale as alleged by the plaintiff-petitioner remains incomplete as the provisions of Order XXI Rule 95 C.P.C. have not been complied with which is reflected by the absence of supportive documents. That apart, defendants are co-sharers in the suit property and the nature of prayer of injunction is not in agreement with the schedule of the plaint. He has yet contended that as the plaintiff-petitioner is not in possession of the whole property, the suit is barred under Section 34 of Specific Relief Act and the plaintiff-petitioner may, at best get 1/3rd share. He has also assailed the sale certificate contending that the purchase of the property in auction sale is questionable as it was made by the mother of the plaintiff-petitioner while his father was alive as reflected from the sale certificate. The Ld. Counsel has also invited the Court's attention to Article 359 of Mohammedan Law for relying upon his submission which alongwith Articles 360-362 disqualified a mother to be appointed as a guardian. He has prayed for rejection of the application preferred by the plaintiff-petitioner.

Upon consideration of the rival contentions of both sides it appears that while the plaintiff-petitioner has based his claim upon the sale certificate issued by the Civil Court, Jangipur, the O.P.s have rebutted the same by challenging the very maintainability of the said auction sale proceeding. It is

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found that it is the mother of the plaintiff-petitioner who has purchased this property on behalf of her minor children by participating in the said auction sale and it is the locus standi of his mother to purchase the same which is the subject matter of challenge by the O.P.s. It is specifically agitated by the O.P.s that she is precluded from acting in such capacity as explicit from the provisions contained in Articles 359, 360-362 of Mohammedan Law. The O.P.s have also assailed the said auction sale contending it to be non-compliant of Order XXI Rule 95 C.P.C. It is their argument that if the said sale is found to be a nullity, then the plaintiff-petitioner becomes devoid of any right, title and interest over the suit property. However, it is respectfully submitted that this Court while adjudicating an application seeking temporary injunction is not invested with the power to determine the legality and propriety of the said proceeding. It is trite law that in adjudication of an application seeking injunction, the extent of liability of proving is of a prima facie case and the plaintiff-petitioner is not saddled with the responsibility of proving a full fledged case of trial. The O.P.s have also argued that the plaintiff-petitioner does not possess the whole of the suit property and he can, at best, stake a claim to 1/3rd of the suit property by inheritance. However, I do not find any merit in such stance of the O.P.s as it appears that L.R. ROR pertaining to the suit plots exist in the name of the plaintiff-petitioner. As far as the issue of the right, title and interest of the plaintiff-petitioner is concerned, I feel that the legality and propriety of the said auction sale ought to have been assailed by the O.P.s long back by instituting a suitable proceeding and the instant proceeding is certainly not the one where the sale can be challenged and relief obtained. Unless proved otherwise, the sale certificate has been issued by a competent Court in discharge of its official function and there is no overwhelming reason to draw any presumption to the contrary. Moreover, such presumption is not one which ought to be drawn at this interlocutory stage. Thus, I feel that the plaintiff-petitioner has been able to establish a prima facie case and the balance of convenience also lies in his

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favour. As such, *the prayer for temporary injunction stands allowed on contest.*

Hence, it is,

ORDERED

that the O.P.s are hereby restrained from disturbing the peaceful possession of the suit property by the plaintiff-petitioner as well as from changing its nature and character till the final adjudication of this suit.

D/c by me.

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

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Jangipur, Murshidabad.