

TS 110/18

Injunction

Order no. 14

Dated 19.03.2019

Both parties are represented by their respective Ld Advocates.

Record is taken up for passing order in respect of the petition under Order 39 Rule 1 & 2 read with section 151 C.P.C.

At the time of hearing the Ld. Advocate for the Plaintiffs submitted that the plaintiff is the owner of the suit property which he obtained from his mother Sushilabala Debi by way of a registered deed of gift being no 209 of 2007. The defendant resides on the southern side of the plaintiff's property and he tried to raise construction of a room without leaving even 1 ft from the plaintiff's house on 3.6.18. In spite of resistance by the plaintiff the defendant raised a construction of about 6 ft, as a result of which the plaintiff informed the Nabadwip Municipality and the Nabadwip P.S on 12.6.18 and the defendant was directed to stop the construction by the Municipality. Now, they are again threatening to complete the construction.

Accordingly, the plaintiff has filed this petition praying for an order of temporary injunction restraining the defendant from raising any construction in the southern side of the plaintiff's property and from disturbing the peaceful possession of the plaintiff from the suit property.

The defendant appeared and filed written objection against the petition for temporary injunction. In reply, the Ld Advocate for the defendant prayed for rejection of the petition on the ground that all the allegations are false. The Ld Advocate for the defendant stated that the suit property is a joint property and not yet been partitioned by metes and bounds. It is the further contention of the defendant that his mother Sushila Bala Devi transferred 4 $\frac{3}{4}$ decimals land to the defendant by way of a deed of gift being no 245/08 dated 10.9.07 and the defendant by accepting the said gift has constructed one tin shed room over the suit land. In the northern side of the defendant's property there is the land of the plaintiff. Not only that the plaintiff has encroached some portion of the defendant's land in the northern side of his property and has raised some illegal construction thereon.

Heard the Ld Advocates for both the parties.

Perused the plaint, petition for temporary injunction, written objection, local inspection report and other materials on record.

Contd....

TS 110/18

Injunction

Contd....Order no. 14

Dated 19.03.2019

Now, on going through the title deed of both the parties it appears that in the same suit plot they have been gifted land by their mother , however the same has been done with separate specific boundaries and the boundaries of both the parties, as mentioned in their deeds are different. It also appears from the local inspection report that some construction has been done in the southern side of the plaintiff's boundary wall. Whether the plaintiff has encroached some portion of the defendant's land is matter of evidence.

As such, without taking evidence the matter in dispute can not be adjudicated properly and if an order of status quo is not granted there may be possibilities of inviting multiplicity of suits and proceedings. As such, for preservation of the suit property at this stage, the petition for injunction should be allowed in the following manner.

Hence, it is

O R D E R E D

that the petition under Order 39 Rule 1 and 2 read with section 151 C.P.C. filed by the plaintiffs is hereby considered and allowed on contest without cost in the following manner.

Both the parties are directed to maintain status quo in respect of the nature, character and possession of the suit property till the disposal of this suit.

To date ,i.e 28.3.19 for W/O against the counterclaim by the plaintiff and Discovery and inspection.

Dic. & Cor. By me

**Civil Judge(Junior Division)
Nabadwip, Nadia**

Sd/- Dibyasree Das

**Civil Judge(Junior Division)
Nabadwip, Nadia**