



Title Suit/160/2022

Present : Rajib Sarkar

JO Code WB01509

**SRI MAYAPUR SMALL SCALE INDUSTRIES
DEVELOPMENT TRUST, SRI MAYAPUR, NABADWIP, NADIA, 741313 Vs. SONATAN
SARKAR AND 3 OTHER**

Order No 23

Date 30.09.2024

Today is fixed for hearing of injunction petition as last chance.

Both parties are represented by separate lawyer's hazira.

Accordingly, temporary injunction petition is taken up for hearing.

The fact of the case according to the plaintiff is that the suit property originally comprised in RS plot no. 1172 measuring about 110 decimals belonged to one Enechhaddin Sk who sold 41 decimals out of the same in favour of one Maya Majumder and 33 decimals in favour of Abani Bhusan Majumder. As such, Abani Bhusan and Maya Majumder became the joint owners of 74 decimals in the said RS plot no. 1172. Thereafter, Abani Bhusan Majumder died and the entire 74 decimals of land was purchased by the defendant no. 1 from his legal heirs and Maya Majumder. Again, the defendant no. 1 sold the said 74 decimals in favour of the instant plaintiff vide a registered Deed of Sale being no. 107 of 1998.

Now, when the plaintiff is trying to record the property in its name, it is seen that the original RS plot no. 1172 has been divided into two LR plots being no. 1172 and 1172/1885. Now, this LR plot no. 1172 comprises 44 decimals has been erroneously recorded in the name of the pro-defendant no. 3 who is the actually owner of only 33 decimals of land. Again, the LR plot no. 1172/1885 measuring about 56 decimals has been recorded in the name of the defendant no. 2 who is the son of the defendant no. 1 on the basis of the Gift Deed being no. 2448 of 2021 executed by the defendant no. 1. The defendant no. 1 had no right to execute such gift deed since he had already transferred his entire share in favour of the plaintiff vide the Sale Deed being no. 107 of 1998. Now, although the principal defendants do not have any physical possession over the suit property, they are threatening to oust the plaintiff therefrom and take possession forcibly on the basis of the fraudulent LR record.

The Ld. Advocate for the plaintiff has filed photocopy of certain documents -

1. Sale Deed being no 1742/1958 in favour of Maya Majumder.
2. Sale Deed being no 286/1960 in favour of Abani Bhushan Majumder.
3. Sale Deed being no 1170/1982 in favour of Defendant no 1.
4. Sale Deed being no 107/1998 in favour of the plaintiff.

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5. Gift Deed being no 2248/2021 in favour of the defendant no 2 along with some other documents.
6. Sale deed being no 167/1998.
7. RS parcha in respect of khatian no 895.
8. LR plot information in respect of plot number 1172/1885.
9. LR plot information in respect of plot number 1172 along with some other documents.

Per contra, Ld. Advocate on behalf of the defendant submits that the plaintiff is claiming his interest on the basis of sale deed being no 107/1998 but the said title deed relates only to LR plot numbers 1172 and 1173. However, the plaintiff has claimed the injunction order on LR plot numbers 1172 and 1172/1885. The plaintiff does not have any document to show any interest either ownership or possession over the plot number 1172/1845. The contention of the plaintiff that the RS plot number 1172 has been broken into two LR plots being numbers 1172 and 1172/1885 even if accepted, such operation had taken place before execution of the Title deed being no 107/1998. Therefore, the plot number 1172 mentioned in such deed must be LR plot and not RS plot.

Moreover, the vendor of the plaintiff Sanatan Sarkar purchased the suit property from Maya Majumder and the legal heirs of Abani Bhushan Majumder. In the title deed of Maya Majumder and Abani Bhushan Majumder it has been mentioned that they purchased 99 decimals in the two plots 1172 and 1173 without specifically stating the amount of land in each plot. If the said 99 decimals be taken equally from the two plots then they had interest only over 49.5 decimals of land in plot number 1172. Such being the scenario they could not transfer any more land to Sanatan Sarkar and the plaintiff could not have accrued title or any other interest over any greater amount of land. The order sheet filed by the plaintiff of the BL & LRO was that of mutation in the name of the defendant and the plaintiff has only made a petition in the form of a letter to the BL & LRO against which no specific case has yet been started.

The Ld. Advocate for the defendants have filed photocopy of certain documents -

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1. LRROR in respect of plot number 1311014.

In reply, Ld. Advocate on behalf of the plaintiff clarifies that LR operation may not have been complete in 1998 and therefore the plot number 1172 mentioned in the deed could also be the RS plot.

Heard both sides.

Considering the documents and rival contentions, this Court is of the opinion that even without going into the controversy of final publication of the LR records, this Court is of the opinion that the vendor of the plaintiffs did not have interest over 74 decimals of land in plot number 1172 and therefore the plaintiff can not have acquired interest over the same. Both the maxims “nemo dat quod non habeth” and “caveat emptor” will apply in this case. However, at this stage, the court will not conduct a mini trial to find out the correctness of the title claimed by the plaintiffs. The observations are only prima-facie in nature and considering the difference between the prima-facie case and prima-facie title it is the opinion of this Court that the allegations of the plaintiffs in respect of having physical possession over the suit property and disturbance in the same by the defendants could not be substantiated since the ROR is in favour of the defendants and no case has yet been registered before the appropriate authority challenging the same. As such, the plaintiff has failed to establish a prima-facie case strong enough to get the relief of injunction.

Hence it is,

ORDERED

that the temporary injunction petition be and the same is hereby **rejected on contest** without any order as to cost.

Fix 17.03.2025 for examination of parties u/o 10 CPC by this Court.

(Dictated and Corrected by me)

Sd/-
Civil Judge(Jr. Divn)
Nabadwip, Nadia

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