

WBND070002652022



Title Suit/199/2022

Present : Rajib Sarkar

JO Code WB01509

SUDIP SAHA Vs. BASANTI SAHA AND OTHERS.

Order No. 14

Date 20.01.2024

Today is fixed for hearing of temporary injunction petition.

Both the parties are present by filing their respective lawyer's hazira.

Fact of the case according to the plaintiff is that 05 decimals of land in the suit plot originally belong to one Hemchandra Saha who executed a will in favour of his daughter Shefalika Saha which was probated vide Probate Case No. 121/1968. Thereafter, Shefalika Saha executed a Sale Deed in respect of the suit property in favour of the present plaintiff being Deed No. 1064/1990. The remaining 2.5 decimals land of the suit plot was transferred by Shefalika Saha in the year 1992 in favour of another Malay Saha and daughter Minati Saha. Thereafter, Minati Saha expired during the life time of Shefalika Saha for which her share was reverted back to Shefalika Saha by inheritance. Again in 2001 Shefalika Saha transferred such share in favour of Malay Saha. Thus Malay Saha became the owner of 2.5 decimals of land in the suit plot. After the expiry of Malay Saha the pro-defendant no. 3 Tandra Saha inherited such 2.5 decimals of land. Now the defendants have

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manufactured a false gift Deed by which Malay Saha has transferred 1.95 decimals of the land in the suit property in favour of the husband of the defendant no. 1. The defendants are trying to enter into the suit property and dispossess the plaintiff. Hence the instant suit.

Ld. Advocate on behalf of the plaintiff has filed photocopy of certain documents which are as follows :

1. Municipal Tax receipt issued by Nabadwip Municipality in the name of Minati Saha.
2. Government rent receipt in respect of khatian No. 31642.
3. LRROR in respect of khatian No. 31642.
4. Death certificate of Benoy Kr. Saha i.e. the father of plaintiff.
5. Copy of heirship certificate.
6. Application form for online payment of land revenue.
7. Land & Land Reforms and Refugee Relief & Rehabilitation of West Bengal GRIPS e challan.
8. Gift Deed being No. 588/1992.
9. Sale Deed being No. 1064/1990.

Per contra Ld. Advocate on behalf of the defendants contended that the entire 5 decimals of land in the suit plot was transferred by Shefalika Saha by way of registered Gift Deed being no. 588/1992 in favour of Malay Kr. Saha and Minati Saha. Thereafter, when Minati Saha expired, her share was inherited by Shefalika Saha and another Gift Deed being no. 341974 of 2001 was executed by her in favour of Malay Kr. Saha. Thereafter said Malay Kr. Saha executed a Gift Deed being no. 1032 of 2002 in favour of the predecessor of the present defendants thereby transferring 1.95 decimals of the land in his favour. A mutation case was filed between the parties where after a field inspection the BL & LRO has recorded the shares of the instant defendants.

Ld. Advocate on behalf of the defendant has filed photocopy of certain documents which are as follows :

1. Gift Deed being No. 1092/2002.
2. LRROR in respect of khatian No. 34769.
3. LRROR in respect of khatian No. 34770.
4. Heirship certificate.
5. Municipal Tax receipt issued by Nabadwip Municipality in the name of Basanti Saha.
6. Government rent receipt in respect of khatian No. 34769.
7. Government rent receipt in respect of khatian No. 34770.
8. Notice issued by BL&LRO in respect of Case No. MN/2022/1311/19004 dated 15.09.2022.

Heard both sides.

On perusal of the documents filed by both the parties, it prima facie appears that 2.5 decimals of land was already transferred by Shefalika Saha in favour of the instant plaintiff by way of a registered Sale Deed being no. 1064/1990. Fact remains after execution of the

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Sale Deed being No. 1064/1990 Shefalika Saha had interest only in respect of 2.5 decimals of land and not over the entire 5 decimals land in the suit plot. Now, the plaintiff has also admitted that Malay Kr. Saha became the subsequent owner of other 2.5 decimals of land that was retained by Shefalika Saha after execution of Sale Deed being no. 1064/1990. The Deed of Gift executed by Malay Kr. Saha in favour of Debasish Saha Roy i.e. the predecessor of the present defendant is only in respect of 1.95 decimals of land. At present both the parties are claiming to be in possession of the suit property. However, the Sale Deed executed in favour of the plaintiff by Shefalika Saha has a specific boundary and such boundary has also been mentioned in the schedule appended to the plaint. Therefore, the claim of the defendant which is based upon a subsequent Gift Deed cannot have any legal sanctity since Shefalika Saha did not have any further interest over the 2.5 decimals of land already transferred in favour of the plaintiff.

Hence, it is

Ordered

that the instant petition be and the same is allowed on contest without any order as to cost.

The defendant is hereby restrained from disturbing the peaceful possession of the plaintiff over the suit property or from changing the nature or character of the suit property in any manner till the disposal of the suit.

Another petition u/s 151 CPC praying for mandatory injunction is pending which related to removing of a padlock over kitchen. Both the parties claim that such kitchen is within their portion and that can only be ascertained by way of a local investigation.

Therefore, at this stage for proper adjudication in case in hand the local investigation is necessary.

Plaintiff is directed to take steps in this regard.

Fix 06.03.2024 for steps by plaintiff.

(Dictated and Corrected by me)

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