

WBND070003072024



Title Suit/220/2024

Present : Rajib Sarkar

JO Code WB01509

Srila Gour Govinda Swami Project Development Group Trust Vs. Susmita Adhikary Debnath

Order No

Date 07.10.2024

Ld. Advocate for the plaintiff moves the ad-interim injunction petition.

The record is sent to the Sheristadar for caveat noting who gives a report stating no caveat being pending.

As such the record is taken up for hearing the ad-interim injunction petition.

The fact of the case in a nutshell according to the verbal submissions of the Ld. Advocate on behalf of the plaintiff is that the A schedule proeprty i.e. non suit property belongs to the plaintiff and the B schedule property i.e. the suit property belonged to the defendant no 2 and 3. There was an agreement between the defendant no 2 and 3 and the plaintiff by which the defendants had agreed to give notice to the plaintiff if they sell the B schedule proeprty. However, without giving such notice they have sold the B schedule property to the defendant no 1 for which the plaintiff has come before the Court for Specific Performance of Contract. The instant petition has been made for restraining the defendants from creating any further encumbrances over the B schedule property and from restraining the defendants from entering into the A schedule property. It is the contention of the plaintiff that the defendants have illegally tried to break the pucca boundary wall of the plaintiff surrounding the A schedule property to grab the same. Hence the present petition.

In support of his contention, the plaintiff has filed photocopies of certain documents which are as follows :

1. LRROR in respect of khatian no 24933.
2. Govt rent receipt in respect of khatian no 24933.
3. Copy of Decree passed in T.A 37/2012.

Heard the Ld. Advocate on behalf of the plaintiff. On consideration of the above mentioned documents and on perusal of the case record, this Court is of the opinion that there lies a question regarding the maintainability of this suit because the agreement has not given any right of preferential purchase to the plaintiff but has only specified that the defendant will have to consult and take the opinion of the plaintiff before selling the B schedule proeprty. Such an agreement curtails the constitutional right of property of the defendant and breaches his absolute ownership. No such covenant can be enforcible under the law and therefore the very basis of the plaintiffs claim prima facie appears to have no legal sanctity. Further the relief in the ad-interim injunction petition has been claimed in respect of the A schedule property which has been

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described to be a non suit proeprty both in the plaint as well as the injunction petition. A relief can not be claim over a non suit property and even if it be considered as a bonafide mis description that can be rectified through amendment at a later stage, the same agreement on which the plaintiff relied had given the right to the defendant to use a pathway over the A schedule. The plaintiff can not try to enforce one part of the agreement that is favourable to his and simultaneously pray for an injunction order to restrain the defendant form exercising his right that he got through the alleged agreement. As such the plaintiff does not have a prima facie case which is a prerequisite condition to consider a prayer for ad-interim injunction.

Hence, it is

Ordered

that the prayer for ad-interim injunction is refused at this stage.

Issue notice upon all the defendants calling upon them to show cause within 14 days from the date of receipt of notice as to why the order of temporary injunction shall not be passed against them.

Requisites at once.

To 09.12.2024 for S/C.

(Dictated and Corrected by me)

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

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