

In The Court of Additional District Judge, 4th Court, Barasat, North 24 Parganas

Present : Sri Saugata Chakraborty, Judge
J.O. Code WB00767

Misc. Appeal No. 82/2024

Order No.3, dated 04.07.2024

Record is put up by petition.

Perused the report of the Sheristadar that there is no caveat pending as on 04.07.2024.

An application under order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure praying for an order of injunction against the respondent is moved.

Appellants, plaintiffs of T.S. 611 of 2024, preferred this appeal against the order of refusal of ad-interim injunction passed by the learned Civil Judge (Senior Division), 1st Court, Barasat on 19.06.2024.

T.S. 611 of 2024 has been filed for reliefs for a decree of declaration of plaintiffs and proforma defendant No. 3 are owners of 1/4th share and defendants No. 1 to 3 owners of 1/4th share and pro-defendant No. 2 the residual 1/2 share. The learned trial court refused ad-interim injunction holding that there was no urgency.

The appellants' case is that, one Kartick Ch. Roy, was settled with suit property at LOP No. 16, C.S. Plot 1015, Mouza Hariharpur, J.L. 40, Barasat, from the Refugee, Relief and Rehabilitation Department, Government of West Bengal. Kartick Chandra died leaving two sons Khokan Chandra and Tarak Roy, two daughters Sandhya Malakar and Mala Dey. Upon a verbal mutual separation between the legal heirs of Kartick Chandra pro-defendant No. 1 and defendant No. 4 jointly appointed in 2004 one Subrata Basu as their attorney by a registered power of attorney, for the purpose of sale of their 2/4th share (one cottah 14 chittack) of the suit property in favour of Jamuna Pyne – pro-defendant No. 2. Thereafter, the residual portion lies with Tarak Roy and Sandhya Malakar. On 08.03.2007 Sandhya Malakar died and her five sons became owner of 1/4th share in the suit property. On 16.08.2007 Shyamal Malakar died and his share went to his four brothers. Tarak Roy on 29.06.2020 died leaving behind defendants No. 1, 2 and 3 who hold the share of 1/4th in the property. It is alleged that the defendants/respondents herein recorded their names in the property to the exclusion of the plaintiffs/appellants herein. Being apprehended appellants come before this court with a prayer for ad-interim injunction restraining the respondents from grabbing the suit property and from alienation in favour of third party.

Appellants relied upon grant of Patta indenture at LOP No. 16 under Mouza Hariharpur, L.R. Khatian No. 10193 in the name of Kartick Chandra Roy, Power of attorney deed No. 347 of 2004, deed of sale No. 17931 dated 14.12.2012,

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information slip on line dated 22.05.2024, death certificate of Tarak Roy, copy of general diary entry No. 2018 dated 25.05.2024 of Barasat P.S. and death certificate of Shyamal Malakar and Sandhya Malakar.

In this case, at this stage without any evidence, the question of delay cannot be decided. The status of the appellants is that they have entitlement to 1/4th share in the suit property. The presumption of correctness in the final R.O.R. is conclusive until rebutted. It is pertinent to add, alienation by creating third party rights will lead to misleading innocent and bonafide purchaser and the sale of which is otherwise barred by law. The three-pillar test has been crossed successfully by the appellants.

Hence, it is ordered that the application under order 39 Rule 1 and 2 read with 151 CPC is allowed exparte. The parties are directed to maintain status quo in respect of nature, character and possession of the suit property till 29.07.2024.

Issue notice upon the respondents to show cause why the appellants' prayer for temporary injunction shall not be granted within 15 days from the date of receipt of the notice.

Appellants are directed to put in requisites and comply with the Order 39 Rule 3 (a) & (b) of the CPC.

To date.

Dictated & corrected by me,

ADJ 4th Court

Addl. Dist Judge 4th Court
Barasat, North 24 Parganas.
04.07.2024