

Order No. 14 dated 27.07.2017

Today is fixed for hearing of injunction petition and for steps.

Both parties filed their respective haziras.

The plaintiff filed an adjournment petition praying for another date for taking steps upon defendant No. 2 to 7 on the ground stated therein.

Heard. Considered.

The adjournment petition is allowed as last chance.

The plaintiff filed a counter affidavit against the written objection filed by the defendant against the injunction application.

Copy served. Objection raised.

Let it be kept in the record.

Now the record is taken up for hearing and passing necessary order.

I have heard both the Ld. Advocates at length.

The factual matrix of the plaintiff's case is that the suit property was previously belonged to Netai Chandra Kolley who had been possessed the same demarcately by dint of oral partition among the co-sharer thereof and his name was duly recorded in the revisional settlement vide khatian no.96 and the same was finally published. While owning and possessing the 'ka' schedule property said Netai Chandra Kolley died leaving behind his four sons namely Bishwanath Kolley, Sombhunath Kolley, Kashinath Kolley and the plaintiff no.1 Astopada Kolley and his two daughters namely defendant no.5 Aloka Golui and Tiloka Manna each having 1/6 share in respect of the 'ka' schedule property. Said Bishwanath Kolley while owning and possessing his 1/6 share in the suit property, died leaving behind his two sons i.e, defendant no.2 and 3 and three daughters i.e, defendant no.4,5 & 7 and his wife the defendant no.6. Said Sombhunath Kolley while possessing and owning his 1/6 share, died leaving behind his two daughters viz. Defendant no. 8 & 9 and his wife the defendant no. 10. Said Kashinath Kolley while possessing his 1/6 share in the suit property died leaving behind his only son the plaintiff no.2 and one daughter the plaintiff no.3 and his wife the plaintiff no.4. Said Tiloka Manna while owning and possessing her 1/6 share in the suit property died leaving behind her two sons i.e, the plaintiff no. 6 & 7. The plaintiff no.5 is the one of the daughter of deceased Netai Chandra Kolley having 1/6 share

in the suit property. All of a sudden the defendant no.1 on 15.12.2015 disclosed that he has purchased the share of Bishwanath Kolleya and Sombhunath Kolley from their legal representative. Being astonished, the plaintiffs obtained the certified copy of registered sale deed being no.4118 for the year 2015 and 3977 for the year 2015 on 28.12.2015 and for the first time came to know that the legal heirs of said Sombhunath Kolley and Bishwanath Kolley were sold out the more share than their actual share i.e. 1/3 in the suit property. The plaintiff further stated that, the name of the Sombhunath Kolleya and Bishwanath Kolley were erroneously recorded in the LRROR in respect of the suit property regarding the share of the 'ka' schedule property. The defendant no.1 on 30.03.2016 with the help of many labours cutting the trees of the suit property and trying to raise construction over the suit property forcefully and illegally.

On the other hand, by filing the written objection against the injunction application the defendant vehemently denied all the material allegations contained in the injunction application of the plaintiff and submitted that the plaintiff is not entitled to get an order of temporary injunction against the defendants. The defendant submitted that by suppressing the material facts relating to the suit property, the plaintiff filed this instant suit and injunction application and has obtained the ad interim injunction order from this Court. The defendant submitted that the plaintiff No. 5 namely Aloka Golui and the mother of the defendant No. 6 & 7 namely Tilakabala Manna were jointly transferred their share by executing a registered deed of sale vide No. 3659 dated 16.05.1983 in favour of their four brothers namely Sambhunath Koley, Bishwanath Koley, Astapada Koley and Kashinath Koley. Hence the plaintiff No. 5 and plaintiff No. 6 & 7 have no right, title and interest or possession over the suit property. The plaintiff knowingly and intentionally suppressed this fact at the time of hearing of ad interim injunction prayer and obtained the ad interim injunction order in their favour. The defendant submitted that the defendant did not come before this Court with clean hand hence the injunction application of the defendant is liable to be rejected and the ad interim order passed earlier in favour of the plaintiff is liable to be vacated at once. The defendant further submitted that the name of the aforementioned four sons of Netai Chandra Koley had been duly recorded in LRROR vide khatian No. 73, 188, 756 & 1078. Hence the aforementioned four sons of said Netai Chandra Koley had acquired the 1/4th share each in the 'Ka' schedule suit property. Thereafter, the legal heirs of Bishwanath Koley were jointly transferred the property measuring about 1.5031 decimal land recorded in 2 dags i.e. LR dag No. 2075 and LR dag No. 2090 to the defendant No. 1. Subsequently, the two daughters and the wife of Sambhunath Koley were jointly transferred the property measuring about 3.5856 decimals land recorded in 3 dags i.e. dag No. 2075, 2090 and dag No. 2072 to the defendant No. 1 by registered deed No. 4118 for the year 2015. In this way, by dint

of aforementioned two registered deed of sale, these defendants became the owner and possessor of 'Ka' schedule suit property and the 'A' & 'B' schedule deeds of the plaint are valid, correct and genuine. Hence the defendants prayed for dismissal of the injunction application of the plaintiff.

In order to support their contention the defendants have produced the registered deed of sale vide No. 4118 of 2015, the registered deed of sale vide No. 3635 for the year 1983, registered deed of sale vide No. 3977 for the year 2015, the LR information slip of plot No. 2090, 2075 and plot No. 2072 and Government rent receipts.

On careful perusal of the registered deed of sale vide No. 2635 for the year 1983 it appears that the two daughters of said Nemai Chandra Koley were jointly sold out their share to their four brothers and thereby lost their right, title, interest and possession in respect of the suit property forever. It appears to this Court that the plaintiff filed this instant suit by suppressing the material facts of this suit. Order 39 Rule 4 of C.P.C. provides that if in an application for temporary injunction or in any affidavit supporting such application a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice. . In the instant suit the plaintiff filed the injunction application by suppressing the material facts regarding the existence of the aforementioned deeds relating to the suit property. Hence considering the conduct of the plaintiff I am inclined to reject the temporary injunction of the plaintiff. Moreover plaintiffs are failed to make out a prima facie case in their favour. The balance of convenience and inconvenience also lies in favour of the defendants.

Hence it is,

ORDERED

That the instant application under Order 39 Rule 1 & 2 read with Section 151 of C.P.C. filed by the plaintiff is hereby considered and rejected on contest without any order as to costs.

The ad interim injunction order passed earlier is hereby vacated.

Fix for taking steps upon defendant No. 2 to 7 by the plaintiff as last chance. I.D. necessary order will be passed.

D/C by me

C.J.(Jr.Divn)

Amta, Howrah

C.J.(Jr.Divn)

Amta, Howrah