

Order No. 28 dated 20.09.2023.

Today is fixed for passing order in respect of petitions dated 01.03.2021 (filed on 05.03.2021) and 02.09.2023.

Parties file hajirah.

This is an application for grant of probate and testament of the testator who allegedly bequeathed thereby his undivided share in parcels of land along with buildings as well as in respect of his own debts and securities. The suit has been filed by the plaintiff as beneficiary of the last will and testament of the testator.

Testator was allegedly unmarried and the defendants could have been his legal heirs in the event of his death as an intestate.

In such backdrop the plaintiff has prayed for temporary injunction on 05.03.2021 for restraining the defendants from transferring, parting with possession, encumbering or constructing any building or creating any third party interest in the suit property. The schedule of such temporary injunction relates to the undivided share of the testator in the parcels of land and building. It has been alleged that defendants are trying to sell the suit property.

Defendant Nos. 1, 5, 6 and 7 on the other hand submitted written statements and stated that the plaintiff is not a blood relation and the will is forged. These defendants also submitted written objection against the injunction petition on 04.05.2023 citing the same set of facts.

The answering defendants also submitted petition under section 94 read with section 151 of CPC seeking to injunct the plaintiff from creating and disturbance in premises No. 4/2, Wards Institute Street, P.S Narkeldanga, Kolkata-6 and also from issuing false rent bills or creating any agreement relating to properties mentioned in the schedule of the plaint.

Neither of the parties have produced any document in order to substantiate the apprehended threat to their respective rights. As per order No. 17 dated 31.08.22 one witness on behalf of the defendants has been examined.

Admittedly, defendants are co-sharers in respect of the properties which were inherited by the deceased testator jointly along with others. As it stands today plaintiff can not claim to be a co-owner along with the defendants in respect of such joint undivided properties. At the same time I can not overlook that all the lawful acts done by the plaintiff in respect of the property bequeathed in his favour shall be ratified in the event probate is granted in his favour. Neither can one forget that plaintiff has sought temporary injunction in respect of undivided land and buildings thereon. It must be remembered that plaintiff being a stranger to any of such possible dwelling house may face certain legal handicap even after getting probate.

In such circumstances, considering status of the plaintiff qua the suit properties I do not think that the questions involved in this suit prompts prudence to grant any order

of temporary injunction in favour of the plaintiff. All the moreso, when he has failed to prove that he requires such relief on an urgent basis. The test of balance of convenience and inconvenience does not lean in his favour and I do not think that his right in this suit will be affected in the event of rejection of his prayer for temporary injunction.

So far as the prayer for temporary injunction advanced by the answering defendants are concerned I find that their scope for getting such relief remains restricted within the narrow scope envisaged in order 39 rule 1(a) of CPC. As I have stated earlier the plaintiff has certain rights in this suit, attributed to him by relevant legal provision. Otherwise the defendants have not been able to produce any document in order to establish *prima facie* that the suit property is in danger of being wasted, damaged or alienated by the plaintiff. Moreover, it is apparent that defendant No. 5 approached the court of Executive Magistrate with a petition under section 144 of CrPC. In such circumstances, I do not deem it fit to grant any prayer for temporary injunction in favour of the answering defendants.

Hence it is,

ORDERED

that both the applications dated 01.03.2021(filed on 05.03.2021) and 02.09.2023 are rejected on contest without any order as to costs.

To 18.01.2024 for S/R.

D/C by me,

ADJ, FTC-II, Sealdah.

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