

T.S. 43 OF 2022
Reg. 40 of 2022

JO Code: 000823

Order No. 23

Date: 11.04.23

Today is fixed for hearing of the application u/o. 39 r. 1 and 2 CPC filed by the plaintiff.

The said application is taken up for hearing in the presence of the Id advocate of both the sides.

This instant case has been filed by minor Nijanur Hossain Molla through his next friend and guardian mother Marjina Bibi. The case in a nutshell is that the suit land originally belonged to Harun Rashid Molla, Anowara Bibi and Manjuara Bibi. That vide a registered deed of gift dated 05.11.2014 being no. 5558 they gifted 46.09375 decimal of land to the minor plaintiff. That the defendants who are co-sharers of the suit property and also relatives are making construction over the suit property in excess of their share. The plaintiff has therefore prayed for an order of temporary injunction restraining the defendant from making any constructions.

The Id advocate on behalf of the defendants submits that the plaintiff obtained the order of ad interim injunction by suppressing the material facts. He submits that the plaintiff had filed an application before the Court of the Executive Magistrate being MF No. 1139/21 and suppressing that fact, the plaintiff obtained the order of ad interim injunction. He further submits that from the documents filed by the plaintiff it is evident that the defendant had filed one case being MF 1226 of 21 against the mother of the present plaintiff wherein the Revenue Inspector had filed the report stating that " it is revealed that causing dispute of brick built structure of dwelling house upto lintel about 1054 square feet is erected by applicant Nurul Haque Molla on the above said plot". He has relied on judgment in CO 1285 of 2009 of the Hon'ble High Court, Calcutta and on AIR 988 Calcutta 421, 39CWN 1044 and on 2018 (1)CLJ Cal 189. He further submitted that since from the information in respect to the suit plot it is evident that all the co-sharers have not been made parties to this suit and the suit for partition without implicating all co-sharers is not maintainable. He has therefore prayed for rejection of the prayer of temporary injunction. Ld advocate on behalf of the defendant further submitted that the suit has been filed by the mother of the minor in her capacity as guardian of the minor but under Muslim Law the mother cannot act as a guardian and hence, this instant suit is not maintainable.

In reply the Id advocate on behalf of the plaintiff submitted that the fact that proceedings u/s. 144 were filed before the Executive Magistrate has not been suppressed by the plaintiff that apart the proceeding before the Executive Magistrate will not be a fact in issue in this suit and hence, it is not a material fact and thus suppression of material facts does not arise.

The Id advocate on behalf of the plaintiff countering the claim that a suit by the mother of a minor Muslim on his behalf is not maintainable stated that the whereabouts of the father is not known and the mother of the minor has been deserted by the father and the mother cannot alienate the property but the mother has every right to protect the property of the minor.

Heard both sides.

Considered.

Since the Civil Court is not bound by any order of Executive Magistrate hence, the fact that the defendant had filed an application u/s. 144 of the CrPC is not a material fact and hence, I am of the view that there is no suppression of material facts specially when the Executive Magistrate does not have any power to issue an order of injunction.

Now, coming to a vital question whether the mother of minor Muslim can file a suit on his behalf. True that the mother of the minor cannot act as the guardian of the minor Muslim son and true that she cannot alienate the property of a minor Muslim but there is nothing in Muslim Law to show that the mother cannot protect the property of the Muslim minor son. That apart, the mother also being a legal heir of the son as per Sariayat Law has

sufficient interest in the property to protect the property. In my considered view, the defendant no. 1 being the relative of the minor Muslim cannot take advantage of the fact that the father of the minor plaintiff has deserted him and usurp the property of the minor. It is the duty of each and every Court to protect the interest of the minor.

In the given premises I am of the view that the minor plaintiff has a strong prima facie case in his favour and the balance of convenience and inconvenience tilts in favour of the plaintiff and further the plaintiff will suffer irreparable loss if the defendant no. 1 succeeds in making construction blocking the entire way of ingress or egress to the minor plaintiff's house. hence, the prayer for temporary injunction is considered and allowed.

Both the parties are directed to maintain status quo in respect of the nature, character and possession in respect of the property described in the schedule of the plaint, till disposal of the suit.

To 11.05.2023 for hearing of all other pending petitions.

D/C

Sd/- Sushmita Gayen
ACJM-cum-CJSD, Kakdwip

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