

Order no 64. dated 15.05.24

Today is fixed for passing order in respect of the petition u/O 39 R.1 &2 of CPC DATED 27.09.2026 filed by the plaintiff and payment of cost of Rs. 300/- by the plaintiff in favour of the defendants.

Both parties file representative hazira through their Ld. Advocates.

Plaintiff paid the cost amount to the defendants and filed the receipts of the payment accordingly.

Taken up the petition u/o 39 R.1 & 2 for passing order.

Ld Advocate for the plaintiff submitted before this Court that plaintiff by instituting this present suit prayed a decree of declaration and injunction in respect of the Ka schedule property and prayed a decree of partition in respect of the Kha schedule property and plaintiff became the absolute owner of the Ka schedule property by dint of a deed of gift being no I-100703010/2016 of 29.07.2016 executed by Kiriti Bhusan Mondal the father of the plaintiff (document filed by the plaintiff) and being the absolute owner of the Ka schedule property the plaintiff have every right to enjoy his property peacefully without any kind of interference by any person . According to the plaintiff the defendants being the adjaceant land owner try to block the passage or road situated at the western boundary of the plaintiff's property and plaintiff peaceful enjoyment has been disturbed by the defendants as at the western side of the plaintiff's property there is defendant's property exist . Thus, plaintiff prayed injunction against the defendants for not to create any obstruction in the said passage of the plaintiff as the said passage is the only way of egress and ingress of the plaintiff from his house.

Ld. Advocate of the defendants submitted before this Court that plaintiff prayed a decree of declaration of the Ka schedule property being the exclusive owner of the said property by dint of a deed of gift being no I-100703010/2016 of 29.07.2016 ,executed by Kiriti Bhusan Mondal in favour of the plaintiff but the said Kiriti Bhusan Mondal has no right to execute gift deed in respect of the Ka schedule property as the said Kiriti Bhusan Mondal has already gifted the Ka schedule property in favour of the defendant no 1 in the year 2015 through a registered deed of gift in favour of the defendant no 1 and and by another deed gift he gifted property in the same dag no to the minor son of defendant no 2 and defendants filed those 2 deeds of gift along with the L.R. RORs stands in their respective names. Defendants prayed for the rejection of the injunction of the injunction petition.

Heard both sides.

On careful perusal of the case record this Court found that after institution of the this present suit the plaintiff prayed for an ad-interim order against the defendants being the absolute owner of the Ka schedule property and plaintiff also placed the original gift deed in his name in respect of the ka schedule property and being satisfied with the plaintiff's documents as well as the submission this Court has allowed the ad interim order ex parte in favour of the plaintiff after restraining the defendant no 1 &2 and directed them not to change the nature and character of the suit property in any manner. Be it pertinent to mention that the plaintiff at the time of moving of ad-interim mentioned about the gift deed which has been executed in favour of minor Surojit Mondal who is the son of defendant no 2 and that deed was executed in the year 2015 by Kiriti Bhusan Mondal but plaintiff did not mentioned about the gift deed executed by Kiriti Bhusan Mondal in favour of the defendant no 1 in the year 2015 . On plain comparision of both the deeds that is, plaintiff's deed and the defendant no 1's deed it has crystal clear that both the deeds concerned with the same property .Further more the plaintiff in his plaint stated that about the dag no 283 of

L.R . khatian 40,89,98 and 476 of mouza Kiyaboni and the ka schedule property measuring about 30 decimal of land originally belonged to Kiriti Bhusan Mondal and his brother Dolgobindo Mondal as 1/2 and 1/2 share in dag no 283 and by one amicable settlement both the brothers partitioned their whole property and Kiriti Bhusan got 15 decimal of land in dag no 283 in the western side. Plaintiff admitted the fact in his plaint that Kiriti Bhusan Mondal has gifted his 5.5 decimal of land in dag no 283 in favour of the minor Surojit Mondal who is the son of defendant no 2 and at the same time contended that the Kiriti Bhusan Mondal gifted remaining 5.5 decimal in dag no 283 in favour of the plaintiff in the year 2016. But now the situation has been changed as defendant no 1 placed 2 registered gift deeds before this court and from the Gift deed being no -00243 for the year 2015 apparently it reveals that the said Kiriti Bhusan Mondal has gifted the property which is similar to the Ka schedule property ,in favour of the defendant no 1 in the year 2015 prior to the presentation and registration of the plaintiff's gift deed.

From the above discussion it is very clear that plaintiff has intentionally tried to hide the fact regarding the gift deed of the defendant no 1 as plaintiff did not come to this Court with clean hand ,if not so then why plaintiff told about the another gift deed executed by Kiriti Bhusan and remained silent about the gift deed executed by Kiriti Bhusan Mondal in favour of the defendant no 1. It is the proposition of law that always the first deed and the last will shall be considered by the Court . And in this situation it is clear like water that the defendant no 1 and 2 's gift deed's were executed by the Kiriti Bhusan Mondal prior to the execution of plaintiff's gift deed and plaintiff is claiming absolute right over the suit (ka schedule)property on the basis of his deed. However , the prima facie of the plaintiff has been clouded and the balance of convenience and inconvenience does not lie in favour of the plaintiff as apparently a doubt has been created regarding the lawful claimant in respect of the suit Ka schedule property. As both the plaintiff and defendant no 1 claimed their lawful right over the Ka schedule property any kind of injunction order can cause injury to any of the parties to the suit . However , rest of the matter will be decided at the time of trial of the suit but now this Court does not think that any injunction order should be there for the time being . Hence,it is

ORDERED

that the injunction petition filed by the plaintiff be and the same is hereby rejected on contest but without any amount of cost .

The ad-interim order passed by this Court on 20.09.2016 is stands vacated .

Next day **17.06.2024** for framing of issues of the suit .

Civil Judge Jr. Div. Additional
Court, Garhbeta.