

T.S. 17/2022 (R-129 of 17)
(Old T.S.44 of 2015)

Order No. 52

Dated : 20.12.2022

1. Both parties file hazira.
2. Today is fixed for hearing of application under order 39 rule 1 and 2 filed by the defendant no.1 on 30.07.2022
3. No Written objection is filed. Adjournment prayer for filing W/o by plaintiff is rejected being infructuous.
4. Accordingly record is taken up for hearing in presence of both the parties.
5. Heard Ld. Advocate for the defendant. Defendant no.1's case in a nutshell is that the the present suit is one for declaration of 3/5th share of plaintiff in all the plots described in Schedule of plaint. It includes plot no. 345/834 where plaintiff has claimed 7 decimal out of total 14 decimal. Defendant no. 1 to 5 are co-sharers with the plaintiff in said plot. Defendant no.1 claims that both the plaintiff and the defendant got 50% share in the aforesaid plot by way of a deed of gift executed by the daughters of Paresh Parya. Plaintiff and defendant no.1 are full blooded brothers and they have inherited properties from their father Paresh Parya.
6. As per Defendants ,the plaintiff is trying to raise construction of a house on the portion of land possessed by the defendant no.1 in aforesaid plot and he is also trying to raise a boundary wall in said plot. it is alleged that the plaintiff has also raised plinth of 3/5th height in the said plot. For said reason defendants had to file instant application.
7. Accordingly, to protect his right on the said plot defendant has prayed for temporary injunction against the plaintiff so that the plaintiff be restrained from changing the nature and character of the suit plot no. 345/834 and from making any further construction.
8. Ld. Advocate for the Plaintiff orally opposed to the instant petition thereby stating that defendant cannot pray for injunction on entire plot no. 345/834 as it is not the subject matter of the present case. Moreso when the present petition is not under Section 151 CPC.
9. Perused the materials on record as well as the documents filed by the defendant no.1 which are already on record i.e. original deed of gift being no.4076/2008, L.R.R.O.R in the name of defendant no.1, L.R.R.O.R in the name of son of defendant no.1 and one plot information slip.
10. On perusal of the record I find that the defendant no.1 and his son has prima facie possession of 50% share in aforesaid plot and , defendant no.1 has a similar prima facie right over the suit plot namely plot no. 345/834 as that of the plaintiff.
11. Now so far as objection of plaintiff is concerned I am of the view that since said plot is not yet demarcated it is not possible to find over which portion plaintiff is claiming his right as no map has been

annexed with his plaint.

12. Now so far as allegation levelled against the plaintiff is concerned I find that since both the parties i.e. the plaintiff and defendant no.1 stand in the same capacity in the suit plot prima facie, it will be appropriate that the parties maintain their status quo over the said plot till the suit is finally disposed to protect the nature of property.
13. Considering all the above facts prima facie it appears that the defendant no.1 is one of the co-sharer and his portion of property has not yet been demarcated .

14. Hence it is

ordered

15. that the prayer for temporary injunction be and the same is **allowed** contest. Both the parties are directed to maintain status quo over the schedule plot till **the disposal of suit.**

16. To **14/02/2023** for P.H of the suit positively

T/c by me

Sd/- Riha Trivedi
Civil Judge (Jr. Divn.)
Additional Court, Garhbeta,
Paschim Medinipur
J.O.Code -W.B -01318

Sd/- Riha Trivedi
Civil Judge (Jr. Divn.)
Additional Court, Garhbeta,
Paschim Medinipur
J.O.Code -W.B -01318