

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA No. GA/1/2025
In CS/5/2025

MAMATA BASU
-VS-
ANJALI DEY AND ORS

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : March 5, 2025.

Appearance:
Mr. Anirban Bose, Adv.
Mr. Suvadeep Sen, Adv.
Mr. Satyajit Senapati, Adv.
...for the plaintiff

The Court: Mr. Anirban Bose, learned advocate, is appearing for the plaintiff.

The plaintiff has filed the present application for grant of ad interim injunction.

Learned counsel appearing for the plaintiff submits that the plaintiff used to reside in the premises no.3 and 3/1, Manna Dey Sarani, formerly Jorabagan Street, Kolkata prior to her marriage. He submits that even after the marriage, being the ancestral property, she is frequently visiting and staying at the said suit premises and still she is having continuous possession in the said premises.

Counsel for the plaintiff submits that the plaintiff is having 1/4th share in the property in question. The plaintiff is paying security charges and electricity consumption charges of the building situated in the suit property.

Counsel for the plaintiff submits that the plaintiff came to know that the defendant nos. 1, 2 and 3 have entered into two sale agreements in favour of the defendant nos.4, 5, and 6 on 31st July, 2024 wherein it is mentioned that Anjali De, Arati Ghosh, Mamata Basu and Tapati De Sarkar and Nilanjan Basu, son of her predeceased sister, late Bani Basu have inherited and acquired undivided 1/6th share to the Schedule A property that is premises no.3/1.

Counsel for the plaintiff has also drawn the attention of this Court to the second agreement dated 31st July, 2021 wherein it is mentioned that in the other property i.e. premises no.3 also Anjali De, Arati Ghosh, Mamata Basu, Dipanwita Basu and Tapati De Sarkar became the absolute owner of 1/6th undivided share over the said property. In the agreement it is also mentioned that save and except vendors and Mamata Basu, no other person or persons has or have right, title and interest in the said schedule properties.

In clause 5 of the agreement it is mentioned that in terms of the agreement, sale shall be completed within 6 months from the date of intimation of obtaining mutation certificate from the Kolkata Municipal Corporation by sellers to the purchaser. In clause 8, it is mentioned that the sellers and each of them shall upon receiving their respective shares of the full sale consideration of schedule B property shall put the purchaser in possession of part of the said schedule properties.

Learned counsel for the plaintiff submits that the plaintiff is not the party to the said agreement nor she has given any consent for execution of sale agreement of the property to the defendant nos. 1, 2 and 3. The

plaintiff and the defendant nos.1, 2 and 3 are having respective undivided share.

Counsel for the plaintiff submits that a dwelling house cannot be sold unless it has been partitioned amongst the parties. Admittedly, the dwelling house is undivided property having 1/6th share each of the parties.

Counsel for the plaintiff submits that as per the terms and conditions of the agreement, the defendant nos. 1, 2 and 3 have agreed to put the defendant nos.4, 5 and 6 in possession of the properties after getting the total consideration from the defendant nos.4, 5 and 6. Learned counsel for the plaintiff submits that plaintiff has not executed any agreement or has received any consideration and as such the defendant nos.4, 5 and 6 could not be put in possession of the dwelling house which is in possession of the plaintiff.

Counsel for the plaintiff has relied upon the judgment in the case of ***Ramdas vs. Sitabai and Others*** reported in **(2009) 7 SCC 444** wherein the Hon'ble Supreme Court has held that it is well settled that the purchaser of a coparcener's undivided interest in joint family property is not entitled to possession of what he has purchased.

Counsel for the plaintiff also relied upon the judgment in the case of ***Dorab Cawasji Warden vs. Coomi Sorab Warden and Others*** reported in **(1990) 2 SCC 117** wherein the Hon'ble Supreme Court has held that respondent no.4 knew that respondent nos. 1 to 3 have only a limited right to transfer their undivided one half share to a stranger purchaser and they contemplated litigation in this regard.

He submits that in the present case also the defendant nos.1, 2 and 3 had the knowledge that the plaintiff is having her 1/4th share and she

has not consented for the sale of the property in question but the defendant nos.1, 2 and 3 have entered into a sale agreement with the defendant nos. 4, 5 and 6 with the condition that they will put the defendant nos. 4, 5 and 6 in possession of the property which is against the law and if this Court will not pass any ad interim injunction, at this stage, the defendant nos. 1, 2 and 3 will transfer the share and put the defendant nos.4, 5 and 6 in possession of the property, for which the plaintiff will suffer irreparable loss and injury.

Considered the submission made by the counsel for the plaintiff.

Perused the materials on record.

From the record this Court finds that the property in question is a joint undivided property but the defendant nos.1, 2 and 3 have entered into a sale agreement with respect of their share with the defendant nos.4, 5 and 6 and in the agreement the defendant nos. 1, 2 and 3 have assured the defendant nos. 4, 5 and 6 that after receipt of the total sale consideration, they will put the defendant nos.4, 5 and 6 in possession of the property, which is not permissible in law. This Court finds that the plaintiff has made out a prima facie case and balance of convenience and inconvenience in favour of the plaintiff and if at this stage, an ad interim order is not passed, the plaintiff will suffer irreparable loss and injury.

Thus, the defendant nos.1, 2 and 3, their men, agents, servants are restrained from handing over possession of the suit schedule properties to the defendant nos. 4, 5 and 6 in any manner whatsoever till 2nd April, 2025.

The plaintiff is directed to serve the copy of the application, plaint and documents to the defendants immediately and to file affidavit-of-service on the returnable date.

Counsel for the plaintiff draws the attention of this Court to prayer (d) of the plaint and submits that prayer (d) is not connected with the suit and prays for deletion of the said prayer.

The plaintiff is given liberty to delete the prayer (d) of the plaint and in the concise statement.

(KRISHNA RAO, J.)