



2021:CHC-OS:388

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

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 2 of 2022

In CS 96 of 2020

Sangita Saha & Anr.

Versus

Jaya Saha & Anr.

Mr. Probal Kumar Mukherjee
Mr. Arnab Mukherjee
Mr. S. Pyne

... For the plaintiffs/petitioners.

Mr. Shounak Mukhopadhyay
Ms. Ankita Chowdhury
Mr. Sayantan Bose

... For the defendant no. 1.

Hearing Concluded On : 12.04.2023

Judgment on : 30.06.2023

Krishna Rao, J.:

1. The plaintiffs have filed the present application for grant of injunction restraining the defendants from disposing of, alienating and transferring the suit property and also for release of an amount of Rs. 60,35,800/- being the



share of rent of the petitioners with effect from 1st August, 2018 to 30th June, 2022 and for appointment of a Special Officer.

2. The plaintiffs have filed the present suit for partition and allied prayers. The plaintiffs are claiming their respective share over the properties by way of inheritance.

3. The plaintiff No.1 is the wife of the deceased Kuldeep Saha and the plaintiff No. 2 is the daughter of Kuldeep Saha. The defendant No.1 is the mother-in-law of the plaintiff No.1 and the defendant no. 2 is the brother-in-law of the plaintiff No.1.

4. The husband of the plaintiff No.1 died on July 29, 2018. The father-in-law of the plaintiff No.1, Late Krishna Ranjan Saha died intestate leaving behind his wife, defendant No.1 and two sons i.e. the husband of the plaintiff and the defendant No. 2. After the death of Late Krishna Ranjan Saha, the movable and immovable properties were duly inherited by the defendants and the Husband of the plaintiff No.1.

5. During the lifetime of the husband of the plaintiff No.1 along with defendants being the owners have let out the entire ground floor and first floor of the building situated at CF-347, Salt Lake City, Sector-1 to the Standard Chartered Bank for an aggregate sum of Rs. 2,98,540/- per month and the said sum was all along divided equally between Kuldeep Saha and the defendants every month being the equal owners of the property.

6. After the death of Kuldeep Saha, the defendants did not show any sympathy or concern for the plaintiffs and were informed that after the



demise of the husband of the plaintiff No.1, all ties of the defendants with the plaintiffs had snapped and they did not recognise the plaintiffs as part of the family members.

7. Mr. Probal Kumar Mukherjee, learned Senior Advocate representing the plaintiffs submitted that the plaintiffs being the legal heirs of the deceased Kuldeep Saha are entitled to get $2/3$ shares in the Estate of Kuldeep Saha and $2/9$ share in the Estate of late Krishna Ranjan Saha. As such the plaintiffs are entitled to $1/9$ share each over the suit property.

8. Mr. Mukherjee submits that after the death of Kuldeep Saha, the plaintiffs are in great difficulties as they are not having any source of income for meeting the basic needs as well as the education expenditure of the plaintiff No. 2. The plaintiff requested the Standard Chartered Bank for remittance of share of rent of deceased Kuldeep Saha to the plaintiffs and all the documents were submitted to the bank. The plaintiffs through an advocate by notice dated September 20, 2018 requested the defendants for partition of the suit property and in reply the defendant No.1 has alleged that the deceased Kuldeep Saha had left behind a Will dealing with all his immovable and moveable properties and refused to pay any amount and also refused to come forward for partition of the suit property.

9. Mr. Mukherjee submitted that the plaintiff No.1 through her learned Advocate requested the alleged executor of the Will, namely Sujit Guin to supply copy of the alleged Will but the same was refused. Mr. Mukherjee submits that neither the defendants are sharing the rent with the plaintiffs nor coming forward for partition of the suit property and also not providing



the copy of the Will and on the other hand, the defendants are interested in siphoning off the share of the plaintiffs in the suit property and the income and accruals therefrom for their own use and benefit to the exclusion of the plaintiffs.

10. Mr. Mukherjee submitted that the defendants have threatened the plaintiffs of dispossession from the Salt Lake property wherein at present the plaintiffs are residing and accordingly the plaintiffs had filed a suit before the Learned Court of Civil Judge (Senior Division) at Barasat and accordingly the plaintiffs have obtained an order of injunction restraining the defendants from dispossessing the plaintiffs from the Salt Lake property without the due process of law.

11. Mr. Mukherjee submitted that as the defendants are not coming forward for mutual partition and also not sharing the monthly rent with the plaintiffs and the defendants are threatening of siphoning of the share of the plaintiffs over the suit property. Accordingly, the plaintiffs have filed the suit along with the present application for grant of injunction.

12. Mr. Mukherjee further submitted that the plaintiff No.1 had also initiated a case against the defendants and one Smt. Sarmistha Saha under the Provisions of Protection of Women from Domestic Violence Act, 2005 and the same is also pending before the Learned Additional Chief Judicial Magistrate at Bidhannagar.

13. Mr. Mukherjee submitted that the plaintiff No.1 had also made complaint with the Officer-in-Charge, Bidhannagar Police Station and



accordingly FIR No. 83 of 2020 has been initiated and on completion of investigation chargesheet has been filed under Sections 498A/506/34 of the IPC and the same is pending for adjudication.

14. Mr. Mukherjee submitted that the Standard Chartered Bank by a notice dated June 1, 2022 terminated the tenancy agreement and the defendants are trying for dealing and disposing of the said property with a 3rd Party.

15. Mr. Shounak Mukhopadhyay, learned Advocate representing the defendant No.1 submits that Kuldeep Saha during his lifetime made and published his last Will and Testament on November 26, 2016 wherein he had bequeathed his share in the immovable properties to him and Sujit Guin has been appointed as sole executor of the said Will and the same was duly informed to the plaintiff by a letter dated October 10, 2018.

16. Mr. Mukhopadhyay submitted that Mr. Sujit Guin had already initiated a probate proceeding before this Court being PLA No.175 of 2022 and in terms of Section 211 of the Indian Succession Act, 1925, the property claimed by the plaintiff have been vested in Sujit Guin and the plaintiffs have no right, title and interest over the suit property.

17. Mr. Mukhopadhyay submitted that the plaintiffs deliberately have not made Mr. Sujit Guin as a party defendant in the suit having the knowledge that Mr. Guin is the executor of the last Will and Testament of the deceased Kuldeep Saha. He submits that the defendant No. 1 is not having any source



of income and the share of rent received by the defendant No.1 with respect of the Salt Lake property at all materials time is used by the defendant No.1.

18. Mr. Mukhopadhyay submits that the plaintiffs have failed to make out any prima facie case and as such the plaintiffs are not entitled to get any reliefs as prayed for.

20. Mr. Mukhopadhyay had relied upon an unreported judgment passed by the Kelara High Court in **OP (c) No. 2487 of 2019 (J. Rajendran Pillai - vs- B. Bhasi & Ors.)** dated January 25, 2022.

21. Heard the learned Counsel for the respective parties, perused the materials on record and the judgment relied by the defendants.

22. Order 39, Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing... or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in



exercise of the power of granting ad interim injunction is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

23. Therefore, the burden is on the plaintiff to prove by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs



protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

24. In the present case, it is admitted that Kuldeep Saha was having the share over the suit property. The only question raised by the defendant that Kuldeep Saha during his lifetime had executed a Will by appointing one Sujit Guin as executor of his Will and Sujit Guin had filed an application for grant of probate.

25. The defendants have denied the share of the plaintiffs over the suit property only on the basis of the alleged Will and main contentions of the defendants that in terms of Section 211 of the Indian Succession Act, 1925, share of Kuldeep Saha in the suit property is vested to Sujit Guin and thus



the plaintiff has no right title and interest over the property. On the other hand, the plaintiff have made out a case that the alleged Will is a forged and manufactured document and the deceased Kuldeep Saha had never executed any Will .The defence which the defendants have taken is to be decided during the trial.

26. The defendants in their affidavit has also admitted that the ground floor of the covered garage space of the property situated at CG-347, Sector-1, Salt Lake was at all material time leased out to Standard Chartered Bank by the Kuldeep Saha and the defendants, as joint owners and landlords in respect of the Salt Lake Properties. It is also admitted that during the lifetime of Kuldeep Saha, the said tenancy in respect of Salt Lake property continued smoothly and the said Standard Chartered Bank operated its Salt Lake Branch therefrom.

27. It is also admitted by the defendant No.1 that the share of rent received by the defendant No. 1 in respect of the Salt Lake property was, at all material times, used for her financial support. The plaintiff has made a case that after the death of Kuldeep Saha, the plaintiffs have been deprived from the share of rent of the Standard Chartered Bank due to which the plaintiffs is facing financial hardship for herself and for the study of the plaintiff No.2.

28. The defendants have made the specific case by denying the right, title and interest of the plaintiffs over the suit property in terms of the alleged Will and the defendants have denied the said Will which is to be decided during trial and thus this Court finds that the plaintiffs have made out a prima facie case and balance of convenience and inconvenience are in



favour of the plaintiffs. This Court finds that if at this stage an interim protection is not granted to the plaintiffs, the plaintiffs will suffer irreparable loss and injury.

29. The judgment relied by the defendant is not applicable in the present facts and circumstances of the case. In the present case, the defendants are denying the share of the plaintiff in terms of the Will and the Will is to be proved by a judicial process. It is settled law, that the Probate Court cannot decide the title of the parties and the Probate Court is a Court of conscience having limited jurisdiction on the genuinity and authenticity of the Will.

30. In view of the above, prayers (a) and (b) of the Notice of Motion are allowed.

31. G.A No. 2 of 2022 is thus **disposed of**.

(Krishna Rao, J.)