

Order No-
Date -

Today is fixed for order on temporary injunction.

Both the plaintiff and the defendants are found absent.

Now the record is taken up for necessary order.

This interim petition is filed by the petitioner under Order -39 Rule 1/2 read with section 151 of C.P.C praying to pass an ad-interim injunction order against the opposite party no-1 and 2 restraining them from transferring the suit land to third parties , dispossessing them from the suit land and from changing nature and character of the suit land in any manner during pendency of the instant suit.

The plaintiff petitioner's case in brief is

that the suit land originally belonged to **Asu Mia and Others** whose name was recorded in disputed R.S plot 12351. On the other hand non-disputed plot no 12350 was recorded in the name of Nozu Mia and others. R.S recorded tenant Abdul Motaleb and Abdul Hamid died leaving no issue resulting Asu Mia to inherit their share. After the demise of Asu Mia, her sons and daughters transferred 12 decimals land to Umar Ali, Alam Sharif and Mohammad Sharif by different Kabala on 04.04.1972. Umar Ali and Mohammad sharif transferred their entire share by Kabala in favor of Alam Aharif on 15.04.1983. Mohammad Sharif died plaintiffs no-1-10 as his legal heirs. During B.S record, lands measuring 9 decimals of non-disputed plot no 12350 and 12 decimals of plot no. 12351 were recorded in a single B.S plot no 16629. The plaintiffs have been in possession to the south portion of plot no 16629 since purchase of the land. Taking advantage of erroneous R.S record, the opposite party no 1 and 2 are disturbing to the peaceful possession of the petitioner; trying to dispossess them and also to transfer the same to some third parties which prompted them to file this instant petition for ad-interim order of injunction.

The petitioners in support of their claim have submitted photocopies of R.S Khatian no. 3202, B.S Khatian no. 4303, deed no, 2140, 6016 and 7296.

On the other hand, the defendants No.1-2 denying all material allegation of the petition filed a written objection contending *inter alia* that the suit land originally belonged to Asu Mia and others. Their name was duly recorded in R.S Khatian no. 3202. It is pertinent to mention here that the comments column of the said R.S khatian is wrong. Asu Mia and others had no right title to the R.S plot no 12351.

It is further case of the O.Ps that R.S recorded tenant Abdul Motaleb and Abdul Hamid died leaving no issue resulting Asu Mia to inherit their share. That Asu Mia died leaving a wife Fatema Khatun , a daughter Solema Khatun and 04 cousins. R.S recorded tenant Nozu Mia died leaving a daughter Goltaj Bibi and brother Toju Mia and Abdul Mia. Again Abdul Mia died leaving 02 sons Mahbub Ali and Yunus and 03 daughters, Beguma Khatun, Julekha Begum and Gol badan who died leaving a son Anowar Hossain and a daughter Marium Khatun. Later on Mariam Khatun died leaving husband Md Idris , a son Ayub Ali and 02 daughters Parvin and Kamrun Nahar.

The heirs of Abdul Mia e.g Yunus and others transferred their shares on 07.08.2014 by registered deed of Kabal in favor of the sons of defendant no.1. Again Mahbub Ali transferred his share in favor of defendant no 1 and 2 by way of Kabala on 12.11.2008. The heirs of Julekha transferred some land in favor of defendant no.2 on 25.06.2012. Thus the opposite parties have been in possession of the suit land by purchase and using it as their walkway. The mutation Khatian as to the suit land is in their name. In the Misc Case filed by the petitioners under Section 145 of Cr.PC, the investigation report reveals clearly the possession of 0.0350 decimals lands in favor of O.Ps and rest of the land is under possession of the petitioner. When the defendant no.1 started erection of boundary wall to the northern side of the disputed land it was resisted along with threat by the petitioners. Then the O.Ps made a G.D entry to the Kornafully Police Station on

21.10.2021. The predecessors of the plaintiff was never in possession in the south portion of disputed Plot 16629.

The plaintiff with a view to grab the suit land has brought this injunction petition with a malice intention. As they are in possession of the disputed land so the temporary injunction petition shall liable to be rejected.

The opposite parties in support of their claim, have submitted photocopies of **RS Khatian No. 3202 and BS Khatian no.402, Mutation Khatian No. 8001 and 8003, Kabal no, 6322, 7651, 6904, investigation report etc.**

Points for determination:

1. Whether the plaintiff has good frima facie and arguable case?
2. Whether the balance of convenience and inconvenience is favor of the plaintiff ?
3. Whether the plaintiff has possibility of irreparable loss?

For brevity and convenience of discussions all the above points are taken together.

Perused the petition for temporary injunction, the written objection against the petition and the documents submitted by both parties in support of their claim.

In view of petition, it appears that the petitioner seeks temporary injunction over lands measuring 12 decimals of R.S plot no. 12351 corresponding B.S plot no. 16629. In view of R.S 3202, plot no. 12351 contains 12 decimals and plot no. 12350 contains 9 decimals. As per remarks column, plot no 12350 was recorded in the name of Nozu Mia and 04 others. All are sons of Fakir Ahmed. On the other hand plot no 12350 was recorded in the name of Asu Mia and others sons of Mohammad Ali. As per share in title column of Khatian, Asu Mia and others was owner of $\frac{1}{2}$ of $(9+12) = 21$ decimals land in the said khatian. It is contention of the opposite party that the predecessors of the petitioner never possessed entire 12

decimals lands. The remarks column of R.S khatian was wrongly recorded. Asu Mia and others was owner of 10.50 decimals land in the said khatian. It is admitted by both parties that on the issueless death of R.S owner Abdul Motaleb and Abdul Hamid, Asu Mia got their share. The heirs of Asu Mia transferred the said 12 decimals in favor of Umar, Ali Alam Sharif and Mohammad Sharif. Later on Umar and Mohammad Sharif transferred the said 12 decimals in favor of plaintiff's predecessor Alam Sharif. It appears from the B.S record that B.S khatian was prepared in the name of plaintiffs predecessors Alam Sharif and others but they got 8 ana shares which is similar to R.S Khatian. In view of Mutation Khatian no 4330, it appears that plaintiffs predecessors has mutated his name in 13.12 decimals lands which is beyond their claim stated in plaint.

It is claimed by the opposite party that the comments column of R.S record was wrongly recorded. Like as Asu Mia and others , Nozu Mia and others was also owner of $\frac{1}{2}$ of $(9+12) = 21$ decimals land in the said khatian. They have purchase 3.50 decimals lands from the subsequent heirs of R.S recorded tenants and have mutated the lands in their name. In view of Mutation Khatian no. 8001 and 8003 the facts appears to me as true. The Report of AC Land of Misc case no. 1039 of 2021 reveals the possession of the defendants in the suit land. In view of the documents filed by the opposite party I have found strong basis of their claim. As the plaintiff's title regarding the some of the lands in the disputed Dag is questionable, they are not entitled to get any equitable relief by way of passing temporary injunction. Thus the balance of convenience and inconvenience is decided to be in disfavor of the plaintiff. Moreover the plaintiffs will not suffer any irreparable loss if the injunction is not granted in their favor.

Considering such position, this court finds no merit in the petition for temporary injunction as preferred on behalf of the petitioners.

Hence,

it is ordered

That the prayer for temporary injunction preferred under Order XXXIX Rule -1 and 2 read with 151 is hereby rejected after considering the situation as above mentioned above.

To ----- for S.R and W/S by the defendant.

D/C by Me

Md. Hasan Zaman

Senior Assistant Judge

Senior Assistant Judge, 2nd Court, Patiya

Chattogram

Md. Hasan Zaman

Senior Assistant Judge

Senior Assistant Judge, 2nd Court, Patiya

Chattogram