

Order No-122
Date -08-08-2022

Today is fixed for order on temporary injunction.

Both the plaintiff and the defendants are present by filing hazira.

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-9 and 10 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 **Hamid Ali** whose name was recorded in R.S Khatian. Hamid Ali died leaving behind Abdur Rashid and a daughter Lotuma Khatun. The heirs of Abdur Rashid and Lotuma Khatun executed a deed of partition on 11.05.1944 and thereby Siraj Khatun and others got the suit land. Thereafter on 30.05.1970, they transferred the said land by registered Kabala in favor of the plaintiff. Since then the plaintiff is in possession of the suit land. Taking advantage of erroneous R.S record, the opposite party no 9 and 10 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.

On the other hand, the defendants No. 9 and 10 denying all material allegation of the petition filed a written objection contending *inter alia* that the suit land originally belonged to Hamid Ali whose name was recorded in 8 ana shares in R.S Khatian no.23. Hamid Ali died leaving a son Abdur Rashid and daughter Lotufa Khatun. Abdur Rashid died leaving behind a wife Siraj Khatun , two sons Abdul Samad, Amir Ahmed and 03 daughters. A deed of partition was executed among them. According to that partition deed, the heirs of Abdur Rashid got the suit property. Amir Ahmed transferred his share by registered Kabala in favor Jarina Khatun wife of Abdus Samad on 05.01.1956. Thereafter

Abdus Samad and his wife Jarina Khatun transferred 12 decimals lands in favor of defendant no 9 and 10 on different dates. Thereafter they have mutated their name vide mutation khatian no. 569. Since Amir Hossain transferred his share on 05.01.1956 in favor of Jarina Khatun, he has no transferable interest on 30.05.1970. Thus by dint of Kabala no 3528 dated 30.05.1979 the plaintiff did not get any right title and interest in the transferred land.

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

Points for determination:

1. Whether the plaintiff has good prima facie and arguable case?
2. Whether the balance of convenience and inconvenience is in 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 (9.50 + 10.50) =20 decimals lands as stated in 1(Ka) and 1(Kha) schedule of the application. The petitioner claims that he purchased the suit land from Abdul Samad, Amir Ahmed and Siraj Khatun by dint of Kabala no 3528 dated 30.05.1970. In view of the said deed, it appears that he purchased the said 20 decimals land out of 93 decimals of R.S Plot no. 63 and 75 of R.S khatian no. 23. On the other hand, The defendants claim that Amir Ahmed transferred 10 decimals lands earlier in favor of Jariman Khatun on 05.01.1956. In view of Kabala 107 dated 05.01.1956 the fact appears to me as true. Thereafter the

defendants no. 9 and 10 purchased (6+6) =12 decimals land form Abdul Samad and Jarina Khatun. Deed no. 2865 and 2866 dated 07.06.1988 reveals the fact to be true. Thus it appears that both the plaintiff and the defendants have title regarding suit property. It is pertinent to mention here that since Amir Ali transferred his share on 05.01.1956 in favor of Jarina Khatun he had no subsisting right to transfer any more land on 30.05.1970 in favor of the plaintiff. Though both the parties claims possession over the suit property but in view of B.S Mutation khatian no. 569, it appears the defendants are in possession of 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

D/C by Me

Md. Hasan Zaman

Senior Assistant Judge

Senior Assistant Judge, 2nd Court, Patiya

Chattogram

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Senior Assistant Judge

Senior Assistant Judge, 2nd Court, Patiya

Chattogram