

Order No-
Date -

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.1-5** restraining them from transgressing into the suit land or 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 **Gunu Mia, Omda Mia and Surut Zaman Bibi** whose name was recorded in R.S Khatian No 4342. Surut Zaman Bibi died leaving her two sons. Guni Mia died leaving his brother Omda Mia. Later on B.S 1591 Khatian stands in the name of Omda Mia. He died leaving 04 sons and a wife Mazma Khatun who gifted 8.50 decimals lands including disputed 4.88 decimals in favor of the plaintiff. He has mutated his name vide mutation Khatian no. 5849. Recently on 24.02.2021 the opposite parties has amassed construction material over the suit property; threatened the plaintiff to enter into the suit property forcefully and continue therein the construction work which prompted him to file this instant petition for ad-interim order of injunction.

On the other hand, the defendants denying all material allegation of the petition filed a written objection contending *inter alia* that R.S recorded owner Gunu Mia and Omda Mia had two sisters whose name was not appeared in the R.S Khatian but P.S khatian was recorded in their name. Unfortunately, B.S Khatian was prepared only in the name of Omda Mia.

It is further case of the defendant that R.S recorded owner Suruzzaman Bibi died leaving behind two sons and 02 daughters Chaman Khatun and Naman Khatun. Chaman Khatun died issueless. Then the sons of Naman Khatun transferred by

two different Kabala 3 decimals land of plot no 20911 in favor of Ali Hossain father of defendant no1-3. The defendants have been erecting a building in their ancestral lands of which 80% construction works has already been completed. The plaintiff having forged a deed of gift vide no 1297 dated 24.05.2005 is claiming the suit land and with ulterior motive has instituted this instant suit. The investigation report of the Misc Case u/s 145 Cr.P.C filed by the plaintiff, the possession of the suit land has been shown in favor of this opposite parties.

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.

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 4.88 decimals of R.S plot no. 17419 corresponding B.S plot no. 20911. The petitioner claims that they got the suit land by deed of **Gift vide no 1297 dated 28.05.2000** from Mazma Khatun, the wife of B.S recorded owner Omda Mia. On the other hand, the opposite parties claimed that they got the suit property from their ancestors and by way of purchase from the subsequent heirs of Naman Khatun one of the daughter of R.S recorded owner Suruzzaman Bibi. Though the petitioner submitted mutation khatian No.5849 in support of his

possession but investigation Report of Misc Case no 273/2021 reveals that the opposite parties are in possession of the suit land and are making construction works over the suit land. Considering overall situation, it appears to me that in the real sense the plaintiff is not in possession of the suit land. It is well settled law that possession is the main considerable factor in the suit for permanent injunction.

As the plaintiff's possession in the suit land is questionable, he is 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 plaintiff will not suffer any irreparable loss if the injunction is not granted in his favor.

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

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 ADR.

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

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