

**Order No-**  
**Date -**

Today is fixed for S.D and for order of injunction petition.

Both the Plaintiff and defendant no. 8/9 are present by filing hazira.

Now the record is taken up for order on injunction petition.

This is an application filed by the plaintiff petitioner under Order XXXIX Rule 1 and 2 r/w section 151 of C.P.C praying for granting temporary injunction by restraining the defendants O.P from encroching or entering into the disputed land and also disturbing peaceful possession of the petitioner till disposal of the suit.

**The brief facts of the petitioner's case is** that the suit land belonged to one Nalini Ranjan and his name was duly published in B.S Khatian. Later on Nalini Ranjan transferred 14 decimals of R.S plot no.768 and  $\frac{769}{Ka\ 587}$  in favor of the plaintiff on 27.05.1990. He has mutated his name vide mutation Khatian no. 411. Thus the petitioner has been in possession of the suit land since purchase. The defendant/O.P on 03.02.2018 tried to encroach to the suit land. It is specific allegation of the petitioner that the opposite parties despite having no right title and interest over the suit are trying to dispossess the plaintiff from the suit land. Hence this petition.

**On the other hand the defendants No. 3 /8/9 denying all material allegation of the petition filed a written objection contending *inter alia*** that lands measuring 16 decimals of R.S plot no  $\frac{769}{Ka\ 587}$  was owned by Subal Chandra and Ishawar Chandra and land measuring 12 decimals of R.S plot no. 768 was owned by Chandra Kumar, Atul Chandra and Nalini Ranjan as per comments coloumn of R.S Khatian. Subal Chandra died leaving 02 sons Lalita Das and Satis Das and Ishawar Chandra died leaving a son Sukhedu Bikash. Thereafter Lalit das and Sudhir Das left for India and their cousine Sukhedu Bikash became owner of the entire property.

It is further case of O.P that while possession 16 decimals of R.S plot no  $\frac{769}{Ka\ 587}$  , Sukhendu Bikash died leaving defendants no-1-3 who later on transferred 12 decimals land on various dates. Now they are in possession of the rest 04 decimals lands. They have mutated their name vide mutation Khatian no. 1785. The plaintiff was never in possession of land of disputed plot no.  $\frac{769}{Ka\ 587}$  . Nalini Ranjan was the owner of only 04 decimals land under plot no.768. Thus though the plaintiff purchsed 14 decimals lands of plot no 768 and  $\frac{769}{Ka\ 587}$  , Nalini Ranjan had no right

to transfer lands from plot no.  $\frac{769}{\text{Ka } 587}$ . Since the O P are in possession of the suit land this petition shall liable to be rejected.

It is further case of the O.P that the opposite party no 8 and 9 purchased 3 decimals and 4 decimals land of plot no  $\frac{769}{\text{Ka } 587}$  vide separate Kabal from defendants no1-

3. Omar Kumar Shil transferred  $\frac{769}{\text{Ka } 587}$  Land of plot no 768 in favour of defendnat no.9. Thus these defendants have been in possession of the suit land since their purchase.They have also mutated their name regarding the suit land. The petiiton being brought by the petititoner with malice intention 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.

In view of petition, it appears that the petitioner seeks temporary injunction over lands measuring 14 decimals of R.S plot no. 768 and  $\frac{769}{\text{Ka } 587}$  corresponding to B.S plot no 1902, 1905. The petitioner claims that they became owner of that 14 decimals land vide Kabal No. 2455 dated 27.05.1990 from the R.S recorded owner Nalini Ranjan. Per Contra, the O.P claims that that Nalini Ranjan was not the owner of R.S plot no.  $\frac{769}{\text{Ka } 587}$  and he was only owner of 4 decimals of plot no. 768 . In view of R.S Khatian no. 679 it appears that 12 decimals of plot no.768 was recorded in the name of Chanddra Kumar, Atul Chanda and Nalini Ranjan. That means Nalini Ranjan was owner of 4 decimals land under the said plot. Again it transpires that Nalini Ranjan had no share in plot no  $\frac{769}{\text{Ka } 587}$  in the said khatian. If Nalini Ranjan had ownership of 4 decimals land in plot no 768 and had no share in disputed plot no  $\frac{769}{\text{Ka } 587}$  then his transfer of 14 decimals land under plot no. 768 and  $\frac{769}{\text{Ka } 587}$  in favour of plaintiff is very much questionable. Moreover there is no such plot  $\frac{769}{\text{Ka } 587}$  in the said R.S Khatian. Thus the contention that Nalini Ranjan

had no transferable right under plot no. 768 and  $\frac{769}{\text{Ka } 587}$  appears to me very much logical and true. It is my considered view that Nalini Ranjan had right to transfer to the extent of 04 decimals only but not 14 decimals. On the other hand in view of the documents filed by the opposite party I have found strong basis of their claim. Thus it appears to me that it involves complicated question of title and it is not a proper forum to decide the question of title now. At this stage, it is very much difficult to decide whether the plaintiff is in possession of the whole disputed land without proving possession by way of taking evidence through independent witness. As the plaintiff's title regarding whole 14 decimals land under plot no. 768 and  $\frac{769}{\text{Ka } 587}$  is questionable, so the plaintiffs 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 plaintiffs. Moreover the plaintiffs 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 S.D.**

D/C by Me

Md. Hasan Zaman  
Senior Assistant Judge  
Senior Assistant Judge, 2<sup>nd</sup> Court, Patiya  
Chattogram

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