

Present : **Md. Hasan Zaman, SAJ, Patiya, Chattogram**

Order No- 10

Dated-17.08.2023

Today is fixed for W/S and hearing of Injunction petition.

Both sides file hazira. The defendant no.17 has filed a petition under Order-6 Rule-17 for amendment of the W/S. The petition for amendment is hereby allowed.

The defendant no.69 has filed today W/S along with relevant documents. The W/S filed by defendant no.69 is hereby accepted. Kept it to the record.

The record is taken up for hearing of temporary injunction petition filed u/o-39, r-1 & 2 of the C.P.C. by the plaintiffs.

Ld. Advocate for the defendants No. 17 has filed W.O in respect of the temporary injunction petition.

Heard Ld. Advocates of both sides in respect of the temporary injunction petition.

The case of the plaintiffs is that the instant suit is filed for a decree of declaration. The suit property comprises of seven schedule. Plaintiffs' case is that land measuring 6.375 decimals of R.S plot no. 261 corresponding to B.S plot no. 829 stated in schedule no.1 is the land for which they sought injunction. They claimed to be owners and possessors in respect of the scheduled property which was purchased by their predecessor **Jiban Krishna Shingh** on **18.05.1954 vide Kabala no. 2178**. Due to erroneous B.S Khatian the defendants are claiming to be owner of the suit land. Now the defendants No. 14-17 who do not have any right, title or interest in the schedule property are forcibly trying to take possession and make constructions over the suit property of which the plaintiffs are the exclusive owners. As this land belongs

to the plaintiffs, the defendants have done such act knowingly for the purpose of causing loss and damage to the plaintiffs.

For this purpose, it is necessary that the defendants No. 14-17 should be enjoined from changing the nature and character of the schedule property.

Severe objection is raised from the side of the defendants no. 14-17.

Ld. Advocate for these defendant no.17 submitted that R.S suit plot no.261 contains 51 decimals out of which 19 decimals was purchased by one Ram Chandra vide Kabala dated 11.05.1954 from R.S recoeded owners. That Ram Chandra died leaving two sons namely Chot Lal Shingh and Vovuneshawar whose name was recorded in B.S Khatian. Chot Lal Shingh transferred 8 decimals land in favor of Nikunja Bihari in the year 1982 vide kabala no.716. Nikunja Bihari died leaving three sons who became owner and has mutated their name vide mutation Khatian no.1023. Two sons of Nikunja Bihari transferred 5.34 decimals land on 14.08.2007 in favor of defendnat no.17. Thus this property was owned and possessed by the defendnat no.17 who also mutated his name as to the suit land. It is to mentioned here that heirs of Nikunja Bihari and Defendant no.17 have executed a registered POA in favor of Jainal Abedin and Almas Khatun who are now in possession.

Ld. Advocate for the defendants further submit that the defendants no.17 is in possession of the land since their purchase and he has mutated his name to the suit land. The defendnat no.17 being a co-sharer to the suit plot, there can be no reason to injunct him in respect of a particular portion of property which is well bounded and demarcated.

Ld Advocate for the plaintiffs admitted during hearing that the defendants having encroched their boundary constructed house on the suit property and regarding the suit property a partition suit is pending among the parties.

Perused the plaint, the relevent documents of both parties and the petition

Having considered the entire situation, it seems that the R.S suit plot no. 261 contains 51 decimals land out of which the predecessor of plaintiff Jiban Krishna Shingh purchased 7 decimals land from R.S recorded owner Prashanno Kumar on 18.05.1954 vide Kabala no. 2178. It is claimed by the plaintiffs that being heirs of Jiban Krishna they became owner of the suit land and are now in possession of it. On the other hand documents filed by the defendants clearly shows that after consecutive transfer the defendants no. 17 got the suit land. It appears that the name of the previous venors were rightly recorded in the B.S khatian and since purchase by predecessor in interest of the defendants they were in possession of the suit land. The several mutation Khatians indicates their possession into the suit land. The admission of the plaintiffs regarding encroachment of boundary by the defendants also proves the possession of the defendants no.17. Admittedly the defendants no.17 is a co-sharer to the disputed plot. A partition suit regarding the suit land is pending in another court. Though the plaintiff appears to be co-sharer to the disputed plot they seek no partition in the present suit. There is no evidence to come to any finding in respect of the specific possession of the plaintiffs to the suit land. It seems that the plaintiffs have not claimed any injunction in respect of the entire suit property. They have claimed for an order of injunction only in respect of the schedule No.1 land in respect of which they have failed to show possession. Now, it is a cardinal principle that a person having title and possession over a property should not be restrained from enjoying the usufracts of the property. Moreover, the plaintiffs have failed to satisfy the Court as to what actual damage the defendants no. 17 have caused to the property. They have simply stated that these defendants no 14-17 have just threatend them to make construction and transfer the same to third other parties. It appears that this is not a situation that cannot be compensated by money. It seems that there

is no reason at all to come to a conclusion that the plaintiffs shall suffer irreparable loss if an order of injunction is not granted in their favour. There is nothing to presume that the situation is such that the balance of convenience and inconvenience tilts in favour of the plaintiffs. Therefore, I am of the considered view that this is not a fit case to pass any kind of temporary injunction which would have the effect of restraining a co-sharer from enjoying the property in which he has got interest

Hence,

it is ordered

That the prayer for temporary injunction preferred under Order XXXIX Rule -1 and 2 read with 151 dated 13.11.2022 is hereby rejected after considering the situation as above mentioned above.

To -----for W/S of other defendants.

D/C by Me

Md. Hasan Zaman
Senior Assistant Judge
Senior Assistant Judge, 2nd Court, Patiya
Chattogram

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