

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

Today is fixed for necessary order on injunction petition.

Both the Plaintiff and defendant no. 2-5 are present by filing hazira. The defendant no-2-5 prayed time for filing W/S.

Now the record is taken for passing necessary order.

This is an application filed by the petitioner under **Order 39 R 1 & 2, r/w Sec 151 of the CPC** praying for granting temporary injunction by restraining the O.P No.2-5 from dispossessing the plaintiff from suit land or from transferring the same to third parties and from changing nature of suit land till disposal of the present suit.

**The petitioner's case in brief is** that original R.S recorded owner Tomiz Golaal and others on 17.06.1935 transferred 50 decimals land by way of Kabala in favor of Musuda Khatun who later on transferred the said land to Maimuna Khatun on 15.04.1942. Her name was duly recorded in B.S Khatian no.782. Thereafter Maimuna Khatun on 17.05.1978 by deed of gift transferred it to the plaintiff. Thus the plaintiff have been owned and possessed the suit land. He has mutated his name vide Mutation Khatian no.3125. It is further case of the petitioner the in the written objection of the mutation case the opposite parties revealed a deed of gift being no. 2446 dated 06.05.1988 and Kabal no. 6305 dated 14.10.2004 which is completely false and fabricated. Since earlier Mimuna Khatun transferred her property in favor of plaintiff she had no transferrable right to execute the said deed of gift no.6305. It is specific allegation of the petitioner that on 08.03.2023 the opposite parties despite of having no right title and interest over the suit land threatened the plaintiffs to dispossess him from the suit land which prompted the petitioner to bring this instant petition.

Ld. Advocate for the plaintiff prays for passing ad-interim order of injunction so that the defendant no.2-4 may be restrained from changing the nature of the suit land or transferring it to third parties otherwise the plaintiff will suffer an irreparable loss and injury which cannot be recovered by any means.

**On the other hand the defendants No.2-5 denying all material allegation of the petition filed a written objection contending *inter alia*** that admittedly the suit land was owned and possessed by Mimuna Khatun and her name was duly recorded in B.S Khatian no. 872. That Mimuna khatun on 06.05.1988 transferred 50 decimals land by registered deed of

Gift vide no.2446 dated 06.05.1988 in favor of her daughter Nurjahan Begum. Plaintiff's father was a witness in that deed of gift. Later on Nurjahan Begum by way Kabala dated 14.10.2004 transferred 40 decimals land in favor of this defendants and on the same date transferred rest of the 10 decimals in favor of Kamrunnahar Begum. The deed of gift no.1780 claimed by plaintiff is totally forged and fabricated. Since the gift deed executed in favor of the plaintiff is a fraudulent document, it is not open for the plaintiff to claim any right title or interest over the suit property. It is further case of the defendants that they are in possession of suit land. In the Misc case no. 88 of 2022 filed against the mutation khatian of the plaintiff, the investigation report reveals the possession of the defendant. The plaintiff 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.

It is admitted by both parties that earlier the suit land was belonged to Maimuna Khatun. The plaintiff claimed the suit land reliance on the deed of gift executed on 17.05.1978 by her grandmother Maimuna Khatun. On the other hand the defendant claimed that Maimuna Khatun transferred her 50 decimals land by way of deed of gift dated 06.05.1988 in favor of her daughter Nurjahan Begum and later on Nurjahan Begum transferred 40 decimals land in favor of the defendants. The plaintiff claimed the gift deed dated 06.05.1988 as forged and fabricated one. No doubt, this dispute regarding forged deed of gift is a matter which is to be decided on recording of evidence in full trial. Though the petitioner claimed possession on the basis of mutation khatian but the investigation report of Misc Case no 88 of 2022 discloses the possession of the defendants in the suit scheduled land. At this stage, it is very much difficult to decide whether the plaintiff is in possession of the disputed land solely on the basis of Mutation khatian in

presence of another registered conveyance by the same vendor. In view of the documents filed by the opposite party I have found strong basis of their claim. As the plaintiff's possession regarding disputed land is questionable, so the plaintiff 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 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.R and W/S**

D/C by Me

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

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