

Order No-10
Date -07.02.2024

Today is fixed for hearing of injunction petition.

Both the Plaintiff and defendant no. 1-11 are present by filing hazira.

Now the record is taken up for hearing.

Heard. Perused the petition for temporary injunction, the written objection and the documents submitted by both parties in support of their claim.

The petitioner's case in brief is

that the suit land originally belonged to Ramzan Ali and Hamid Ali and their names was duly recorded in R.S Khatian. Each was owners of eight Ana shares in that khatian. Ramzan Ali died leaving sons Ali ahmed Kala Mia Abdul jalil and Bacha Mia as his legal heirs. That Ali Ahmed and Kala Mia transferred their shares by dint of Kabala dated 08.04.1941 to Nur Ahmed who transferred the same by Kabala dated 14.06.1941 in favor of Bacha Mia whose name was duly recorded in B.S Khatian. Thereafter died leaving the plaintiffs as his legal heirs and since then the plaintiff have been being owned and possessed the suit land without any interruption. That on 01.07.2023 the defendant revealed the disputed kabalas vide no. 6152/6153/6154.6155 dated 18.11.1968 in the name of Bacha Mia which the plaintiffs claimed to be forged and fabricated.

It is specific allegation of the petitioners that the opposite parties, having no right title and interest over the suit land, are trying to dispossess the plaintiffs from the suit land and also trying to make construction thereon 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.1-11 may be restrained from disturbing the peaceful possession or from dispossession the plaintiff therefrom or from changing the nature and character of the suit land, otherwise the plaintiffs will suffer an irreparable loss and injury which cannot be recovered by any means.

On the other hand the defendants No.1-11 denying all material allegations of the petition filed a written objection contending *inter alia* that admittedly suit lands belonged to Ramzan Ali and Bodiuzzaman whose name duly recorded in R.S Khatian No. 1838. Again Ramzan Ali and Hamid Ali were the owners of lands of R.S Khatian no.1209. Ramzan Ali died leaving sons Ali Ahmed Kala Mia Abdul Jalil and Bacha Mia as his legal heirs. That Ali Ahmed and Kala Mia transferred their shares on 08.04.1941 to Nur Ahmed who transferred the same on 14.06.1941 to Bacha Mia the predecessor of the plaintiffs. That Bacha Mia transferred all

his entire shares which he goes by inheritance and by purchase on 18.11.1968 by dint of 04 Nos of Kabal in favor of Kala Mia and Ali Ahmed. Kala Mia and Ali Ahmed also purchased some other lands from different vendors and in consequence of which their name has been duly recorded in the B.S Khatian. The defendants are the heirs of Kala Mia and Ali Ahamed. It is claimed by the defendants that they have been in possession of the suit land by for about 85 years since purchase. They have constructed a two storied building over the suit land. 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.

By this time, the suit land has been locally inspected by an advocate commissioner and he has accordingly submitted inspection report which has been found kept on the record.

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 disputed R.S plot no.2077 corresponding to B.S plot no. 2824 contains 9 satak lands out of which the petitioner sought temporary injunction over 2.25 satak lands. It is admitted by both parties that the suit land belonged to Ramzan Ali and Hamid Ali and their names was duly recorded in R.S Khatian no 1879. Admittedly Ramzan Ali died leaving sons Ali ahmed Kala, Mia Abdul Jalil and Bacha Mia as his legal heirs. It is further admitted by both parties that Ali Ahmed and Kala Mia transferred their shares by dint of Kabala dated 08.04.1941 to Nur Ahmed who transferred the same by Kabala dated 14.06.1941 in favor of Bacha Mia. The petitioner claims that Bacha Mia is their predecessor and his name has been duly recorded in the B.S Khatian no. 2187. In view of that Khatian this facts appears to be true.

On the other hand, it is claimed by the defendants that the plaintiff has no right tile and interest into the suit plot because Bacha Mia transferred his entire shares of plot by dint of 04 Nos. of Kabala in the year 1968. Plaintiff produced R.S khatian no.1879 which reveals that Ramzam Ali got 6.75 Satak land in R.S plot no 2077. It appears to me that after demise

of Bacha Mia, each of his four sons including Bacha Mia got 1.68 Satak lands in that plot. In view of Kabala No. 6152/6155 dated 18.11.1968 submitted by defendants, it appears that Bacha Mia transferred his entire shares of the suit plot in favor of predecessors of the defendants. Though plaintiffs challenged those deeds as forged and fabricated but since those deeds are more than 30 years old and registered documents it shall be taken to be genuine until it is proved otherwise. Those transferred deed clearly shows that Bacha Mia transferred lands of the suit plot and for this the petitioner being heirs of Bacha Mia had no more right to claim property in the suit plot. I do not find no basis of B.S record regarding suit plot in the name of Bacha Mia. Though the petitioner claimed possession in the suit land but the B.S record and the rent receipts proves possession of the defendants in the suit land and moreover the possession of the defendants may inferred from the local inspection reports filed by the advocate commissioner. Besides this, plaintiff's claim appears to me very much vague and uncertain because plaintiff initially claimed injunction over entire 9 satak lands and later on by amendment seek injunction over 2.25 satak lands which clearly indicates plaintiff's non-entitlement of rights and claim.

In view of the documents filed by the opposite parties I have found strong basis of their claim. As the plaintiff's title in the suit land is questionable in presence of disputed registered Kabala vide no. 6152/6155 dated 18.11.1968 and the defendants appears to be in possession of the suit land 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.R and W/S

D/C by Me

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

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