

O.S 109 of 2024

Order No-
Date -24.11.2024

Today is fixed for hearing of injunction petition as per order dated 23.10.2024 in presence of both parties.

The plaintiffs and the defendant no.1-5-7 are present by filing hazira and the defendants has filed W.O against the injunction petition.

Now the record is taken up for hearing. Heard learned advocate for both parties and perused the documents filed by the both parties.

This is an application filed by the plaintiffs under Order 39, Rules 1 and 2, read with Section 151 of the Code of Civil Procedure, seeking a temporary injunction to restrain Defendant Nos. 1-5-/7/15 from entering or disturbing or altering the nature of suit land or transferring the same until the final disposal of the suit.

The petitioner's case in brief is that the disputed land described in the schedules (Schedule 1 & 2) is their ancestral property inherited from Lal Mia, who passed away leaving behind a wife, a son, and five daughters. They assert that they have been in possession of the suit land, which includes their bamboo-made dwelling house situated in the South-West corner of disputed R.S. Plot Nos. 5207 and 5208. The plaintiffs alleges that despite their lawful possession, the defendants, particularly **Defendant Nos. 1-5/7/15**, are attempting to disturb their peaceful enjoyment of the property. They contends that the defendants are in the process of constructing a permanent structure on the suit land, which would alter its nature and deprive the plaintiffs of their rightful ownership and possession. The plaintiffs recalled that a prior Partition Suit No. 22 of 2018 led to a status quo order during its pendency, but the suit was later converted to a case before the Land Survey Tribunal, where it remains unresolved. Fearing that the defendants' actions would irreparably harm their interests, the plaintiffs filed the current injunction petition to restrain the defendants from any construction, disturbance, or transfer of the suit land until the suit is finally adjudicated.

In their written objection, Defendants Nos. 1-5/7 denied all material allegations made by the plaintiffs and contended that the land in Schedules 1 and 2, encompassing 26 decimals, was originally owned by Lal Mia, whose name was recorded in R.S. Khatian Nos. 1026 and 940. Upon the deaths of Lal Mia and his wife, Bodiunessa, the land was distributed among their heirs. Thus Nur Mohammad, their son, inherited 7.80 decimals, while each of the daughters, Rashida Khatun and Arafa Khatun, received 3.90 decimals. Additionally, another daughter, Maija Khatun, transferred 3.50 decimals of land to Rashida Khatun

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through a registered deed on March 13, 1983, increasing Rashida's share to 7.15 decimals.

The defendants further claim that Nur Mohammad passed away, leaving behind a complex web of heirs, including his nine sons (four of whom are plaintiffs and the others are defendants) and two daughters (plaintiffs). As a result, Defendant No. 1 acquired 0.68 decimals by inheritance. Furthermore, Lal Mia's daughters Rashida and Arafa gifted 6 decimals of land from Schedules 1 and 2 to Defendant Nos. 1 and 2 on December 30, 1987. The remaining 4.15 decimals of the suit land were inherited by Defendant Nos. 2-7, who are the heirs of Rashida and Arafa. Defendant No. 15 acquired an additional 0.90 decimals through a gift deed executed by Arafa Khatun on August 30, 2009.

According to the defendants, their cumulative ownership amounts to 11.73 decimals in Schedules 1 and 2, and they assert they have been in uninterrupted possession of this portion. They contend that previously they had an old, dilapidated house on R.S. Plot Nos. 5207 and 5208, which has now been replaced by a newly constructed single-story structure designed to support three stories in the future. The defendants having no legal title, possession, or interest in the suit land has brought this injunction petition out of malice to disrupt their legitimate ownership and possession and the ongoing construction efforts. The defendants point to the investigation report in Miscellaneous Case No. 204/24, which corroborates their possession of 3 decimals in B.S. Plot No. 7031 and 6.50 decimals in B.S. Plot No. 7032. Based on these grounds, the defendants assert that their claims are backed by lawful inheritance, documented transfers, and possession, and they urge the Court to dismiss the plaintiffs' petition as baseless and devoid of merit.

Considering the above facts and the documents submitted it appears that the plaintiffs assert their claim to the suit land as ancestral property and cite their alleged possession over part of the disputed plots (Plot Nos. 5207 and 5208). The defendants, however, have produced documents, including deeds of inheritance and gifts, which establish their ownership and possession over 11.73 decimals lands in the suit plots. The defendants' claim is further supported by the investigation report of Miscellaneous Case No. 204/24, which evidences their possession over specific portions of the disputed plots. Based on the documents and submissions, it appears that both parties have overlapping claims, but the defendants have demonstrated a stronger documentary basis for their possession. It appears from both parties admission and the photos attached that the defendants have already constructed a

single-floor building on the disputed land and intend to expand it. Granting an injunction at this stage would disrupt their ongoing construction activities and may result in financial loss.

On the other hand, the plaintiffs have not provided conclusive evidence of their possession or a credible claim to the entirety of the disputed land. It is seen that the defendants have prima facie title and ownership over 11.73 decimals lands in the two suit plots. The defendants are not making constructions over whole lands. In such case any inconvenience caused to the plaintiffs can be addressed later on through compensation if their claim is ultimately established. In my view no problems would arise to adjust the plaintiff's claim from the remaining portion of defendants.

The Hon'ble Appellate Division in *Abdul Mannan vs. Ayesha Begum* (55 DLR AD 12) held that an injunction should not be granted unless the plaintiff conclusively establishes possession or a stronger claim than the defendant.

In *Md. Sadeque vs. Rehana Akter* (60 DLR 20), the Court emphasized that the balance of convenience and irreparable loss must heavily favor the plaintiff to justify an injunction.

Considering the evidence, arguments, and the principles laid down by the apex courts the plaintiffs have failed to establish a prima facie case with sufficient evidence of possession or a stronger claim over the suit land. The balance of convenience favors the defendants, given their ongoing construction activities and possession. The plaintiffs have not demonstrated irreparable harm that justifies an injunction at this stage. In 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 petition of temporary injunction dated **23.10.2024** preferred under Order XXXIX Rule -1 and 2 read with 151 is hereby rejected after considering the situation as above mentioned above.

To -----for W/S.

D/C by Me

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

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