

Order No- 10
Date -25.11.2024

Today is fixed for hearing of injunction petition. The record is taken up accordingly, with both the plaintiff and Defendant Nos. 1 present.

Heard learned advocate for both parties regarding injunction petition.

This is an application filed by the petitioner under Order 39, Rules 1 and 2, read with Section 151 of the Code of Civil Procedure (CPC), seeking a temporary injunction to restrain Defendant Nos. 1 from entering or altering the nature and character of the suit land or transferring the same to third other parties until the final disposal of the suit.

The defendant No.1 appeared and filed W.O against the injunction petition.

The plaintiffs assert that they are the rightful owners of 16 decimals of land situated in R.S. Plot No. 2552 corresponding to B.S. Plot No. 3380. Ownership is claimed through purchase and inheritance. The plaintiffs claim that Plaintiff Nos. 1/3–8 own and possess 9.94 decimals, reflected in Mutation Khatian No. 8914 and the other Plaintiff Nos. 2/9–18 own 6.06 decimals, for which mutation proceedings are pending. It is alleged that on 22.06.2024, Defendant No. 1, without any legal right, title, or interest, attempted to dispossess the plaintiffs from the suit land. The plaintiffs contend that if Defendant No. 1 is not restrained by an injunction, irreparable harm may be caused, especially during the upcoming court vacation.

Defendant No.1 in his written objection, denied all material allegations. The defendant contends that though the plaintiff claimed 16 decimals land by purchase vide two nos of Kabala but his previous vendor Abdur Rahim was owner of only 2 decimals land. B.S records was not published in the name of that Abdur Rahim. The plaintiffs most illegally purchased 16 decimals lands from Abdur Rahim. The mutation Khatian is also illegal. He further claims that the plaintiffs' petition is brought with malicious intent and a sense of jealousy, as the plaintiffs have no rightful claim or interest in the land. Based on this, the defendant prayed that since the petition lacks merit and he is the rightful owner and possessors of the disputed land the petition is liable to be rejected.

I have carefully perused the submissions of both parties and their respective documents. It appears that the plaintiffs have filed the present suit permanent injunction over 16 decimals of land in R.S. Plot No.2552 corresponding to

B.S. Plot No. 3380. After an assessment of both parties' documents, it is evident that the plaintiffs by two nos of Kabala have purchased the suit lands. Though the B.S records was not recorded in the name of plaintiff's previous vendor but the mutation Khatian No.8914 clearly reveals that the plaintiffs has possession over 9.94 decimals land in the suit plot no.3380. Again in view of judgement and decree of Other suit No.138 of 2006 brought by defendant No.1 it is seen that the present plaintiffs has been admitted to be in possession in the suit plot no. 3380 in the 16 decimals land out of 46 decimals. Though the defendants denied both title and possession of the plaintiffs in the suit land but these evidences clearly indicates that the petitioners have possession over the suit land. Since it is a case of permanent injunction it would be wise of being restrained from discussing the title of both parties in this stage. Thus it appears that the plaintiffs have established a prima facie case based on possession and documentary evidence, particularly the mutation record and prior judicial acknowledgment of their possession.

The balance of convenience tilts in favor of the plaintiffs, as their possession is established, and any alteration to the suit land during the pendency of the suit may lead to irreparable damage. If Defendant No. 1 is not restrained, the plaintiffs may suffer irreparable injury that cannot be adequately compensated by monetary relief.

In light of the above findings and pursuant to the principles laid down in various judgments, including *Chowdhury Jasim Uddin vs Bangladesh (1997) 49 DLR (AD) 213*, where it was emphasized that possession of immovable property must be protected in injunction suits, this court deems it fit to grant temporary relief to prevent irreparable harm.

Hence, it is ordered

That the petition of temporary injunction dated 14.07.2024 is hereby allowed on contest. Accordingly Defendant No. 1 is restrained from entering, altering the nature and character of, or transferring the suit land to any third party until the disposal of the suit or further order by this court.

Petitioner to put in requisites at once .

To -----for W/S.

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

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