

Misc. (J) 1/2017.

ORDER

21.06.2017.

Parties are represented.

Heard both sides.

With the following order the instant Misc(J) Case is sought to be disposed of.

Petitioner filed petition under Order 39 Rule 1 and 2 CPC read with Section 151 CPC praying for restraining the opposite parties from transferring the suit land and from raising permanent construction over the suit land and from restraining them from changing the nature and feature of the suit land till disposal of the main suit. The aforesaid petition was verified and supported by an affidavit. On the basis of the aforesaid petition the present miscellaneous proceeding has been started.

Upon motion this Court deemed it fit to issue show-cause notices to the opposite party to show-cause as to why the injunction as prayed for shall not be granted.

The opposite party No. 1, 2, 3, 6 and 7 contested the proceeding by filing their written objection. Opposite party Nos. 8, 9, 11 and 12 failed to contest the proceeding and accordingly case proceeded exparte against the opposite party No. 8 vide order dated 18.12.2017 and against opposite party No. 9, 11 and 12 vide order dated 25.4.2017. Again vide order dated 17.5.2017 case proceeded exparte against opposite party Nos. 4 and 5.

Case proceeded in absence of opposite party No. 10, 13 and 16's written objection. Both sides were heard.

Learned counsel for the opposite parties submits fairly

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that an order of status-quo may be directed to be maintained in the fact circumstances of the case. Learned counsel for the petitioner submits that a order of status-quo would serve the ends of justice.

Heard. Perused the case record.

The facts of the case material for disposal of the present Misc(J) case is narrated hereinunder in brief :

That one Golap Das and Balidram Das were the original owners and possessor of lands mentioned in the scheduled A, B, C, D, E, F, and G to the plaint and that Golap Das expired leaving behind Someswar Das, Premcharan Das, Dhananjoy Das while Balidram Das expired leaving behind Priyamohan Das and Chandramohon Das to inherit their intestate properties. On the death of Golap Das, Someswar Das, Premcharan Das, Dhananjoy Das owned and possessed the scheduled properties and mutated their names in respect of the said lands in the land records. On the death of Dhananjoy Das the petitioner inherited 1/5th share of the schedule A properties, 1/3rd share in the schedule B to G properties, similarly on the death of Someswar Das opposite party Nos. 1, 2, 3 and on the death of Premcharan Das opposite party no. 4 to 8 inherited the respective shares of their fathers.

The petitioner being the daughter of Dhananjoy Das, however, failed to mutate the land records of the land, left behind by her deceased father due to the indifference of the opposite parties and have failed to get the lands partitioned despite request. The petitioner alleges that the opposite party on being approached refused to make partition of the schedule properties under which circumstances plaintiff has been compelled to institute the suit against the plaintiff. Petitioner apprehends that the opposite parties might

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transfer parts of the suit land and change the nature and feature of the suit land to deprive the petitioner for which the suit property is required to be preserved. Hence the petition.

The opposite party Nos. 1, 2, 3, 6 and 7 objected to the petitioner's prayer on the ground of absence of prima-facie case, balance of convenience, or irreparable loss in the petitioner's case and prays for dismissal of the petition.

The opposite parties admits the ownership of the lands mentioned in schedule A to G as claimed by the petitioner and further admits further admit that Dhananjoy Das son of Golap Das have left behind the petitioner as his surviving legal heir to inherit 1/5th share in the A schedule lands and 1/3rd share over the B to G lands. The opposite party, avers that they have no objection to if mutation of the land records in respect of the petitioner's share is effected and claims that the petitioner has been occupying various plot of land since the lifetime of her predecessor-in-interest, for which the question of they possessing her lands does not arise. The opposite parties admitting a fact that the suit land have not been legally partitioned averred that the petitioner did not approach the opposite parties for partition of the suit land. The opposite parties prays for dismissal of the petition.

Heard both sides.

Perused the case record. Also perused the xerox copies of documents submitted alongwith petition.

It is well settled that a party seeking the relief of injunction has to prove existence of three essential pre-requisites being (a)

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prima-facie case, (b) balance of convenience, (c) irreparable loss or injury in his or her favour.

Now let me scrutinize the petitioner's case in the light of the aforesaid cardinal principles.

Perusal of the rival claims of the parties discloses that petitioner had prayed for partition of the suit land alleging refusal to partition by the opposite party. The opposite parties, on the other hand, averred that partition had already been effected amicably in the family. The opposite parties further averred that petitioner is in possession of certain plots of land. Legal partition has not taken place is an admitted fact. Hence a prima-facie case for trial is made out. Without partition if the suit land is allowed to change hands or its feature is allowed to be changed, it will cause much prejudice to the petitioner as it would also lead to multiplicity of proceeding. Irreparable loss or injury would thus ensue. On the other hand, the opposite party being in possession of lands and enjoying the same would not have anything to lose if the suit property is protected from being damaged or wasted till final adjudication of the case.

Accordingly considering the fair submissions of the learned counsels of both sides, and also in view of the above discussions, the scheduled properties can be directed to be maintained in status-quo in respect of ownership and possession till disposal of the main suit and I direct so. The operation of the status-quo order, however, will not be a bar to the parties in enjoying the possession of the same, by way of cultivation.

With the above direction Misc(J) Case is allowed on contest without costs.

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Parties to bear their own costs.

Misc(J) Case is disposed of accordingly.

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As dictated.


Civil Judge,
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