

IN THE COURT OF SH. AKASH JAIN, ACJ/CCJ/ARC(WEST)
TIS HAZARI COURTS, DELHI

In the matter of:-

Surinder Singh Sadana & Anr. v. Surbir Singh Sadana & Anr.

1. Sh. Surinder Singh Sadana

S/o Late Sardar Mohan Singh
R/o E-9/B, 3rd Floor, Block-E
Moti Nagar, Ramesh Nagar
New Delhi-110015

2. Sh. Gurcharan Singh

S/o Late Sardar Mohan Singh
R/o A-803, Monacity Homes, Landran Road
S.A.S. Nagar (Mohali), Punjab-160062

..... Plaintiffs

Versus

1. Sh. Surbir Singh Sadana

S/o Late Sardar Mohan Singh
R/o J-5/101 J, First Floor
Rajouri Garden, New Delhi

2. Smt. Kulwant Kaur

W/o Late Sardar Mohan Singh
R/o J-5/101 J, First Floor
Rajouri Garden, New Delhi

..... Defendants

ORDER

1. Vide this order, I shall decide the application under Order 39 Rule 1 and 2 CPC moved on behalf of plaintiffs against defendants seeking grant of ad-interim injunction directing defendant no. 1 to not create any third party interest in respect of properties i.e. Dag No. 1625, 1471 and 1472, pertaining to periodic patta No. 1354, 1172 and 1704 under holding No. 2383 of Ward No. 14 and Holding No. 10/238, Ward No. 10, ad-

measuring 10473 Sq. Ft. (i.e. 1163.7 Sq. Yards) situated at Tinsukia Town, Signal Bararack, Mohan Singh Lane, Rangagora Road, P.O. P.S. and District Tinsukia, Assam (hereinafter referred to as 'suit properties').

2. Brief facts relevant for adjudication of present application as per plaintiffs are that the plaintiffs and defendant no. 1 are real brothers and defendant no. 2 is their mother. The suit properties were purchased by father of plaintiffs and defendant no. 1 namely, Late Sardar Mohan Singh in the name of defendant no. 2. It is alleged that defendant no. 1 got the signatures/thumb impression of defendant no. 2 on GPA dated 09.05.2018 intentionally and deliberately and that the said GPA is a false, fabricated and manipulated document. It is further alleged that defendant no. 2 never went to notary office and has no power to give GPA to defendant no. 1 as she is very old (96 years old), mentally unsound and bed ridden since 2016.

3. It is averred by the plaintiffs that in August, 2019 mid night 02:00 AM, defendant no. 2 fell down and got major injury on right side of her brain and a fracture on her right hand, due to which she lost her memory, sanity and got bed ridden with urinal pipe. It is further averred that earlier some properties were sold out by plaintiffs and defendant no. 1 with the consent of defendant no. 2 and share of the said properties were divided into 4 portions amongst the plaintiffs and defendants. It is alleged that on 05.11.2019 when defendant no. 1 and his son were at Assam, defendant no. 1 threatened both the plaintiffs that they are owner of the suit properties and got GPA executed in their favour from defendant no. 2. It is further alleged that defendant no. 1, who is presently looking after defendant no. 2, is not letting plaintiffs to meet defendant no. 2 and also threatened them on different occasions that they have no concern with the suit properties. It is further alleged that defendant no.1 along with his son

are trying to dispose of suit properties through GPA dated 09.05.218 which is a forged and fabricated document. As such, present suit seeking declaration, permanent and mandatory injunction has been filed by the plaintiffs.

4. Defendants no. 1 and 2 contested the present suit by filing their joint written statement and strongly refuted the averments and allegations as made in the plaint. It is averred by the defendants that plaintiffs have no independent right and interest in the suit properties and have no cause of action to file the present suit. It is further averred that the suit properties are self-acquired properties of defendant no. 2 as they were admittedly purchased by her late husband Sardar Mohan Singh in her name and said properties are her stridhan. While denying the allegation that GPA dated 09.05.2018 is a false and fabricated document, it is averred that defendant no. 2, on her own will and consciousness, executed the registered SPA dated 07.05.2018 and GPA dated 09.05.2018 in favour of defendant no. 1. It is further averred that mental condition of defendant no. 2 is perfectly normal and being absolute owner of suit properties, she has complete right to execute GPA in favour of defendant no. 1. It is further submitted that the suit properties are situated in Assam, as such, this court has no territorial jurisdiction to try the present suit. With these submissions, the defendants prayed for dismissal of present suit.

5. Vide present application under Order 39 Rule 1 and 2 CPC, the plaintiffs have sought interim injunction against defendants to restrain them from selling, alienating and creating 3rd party interest in the suit properties. The defendants on the other hand, have prayed for dismissal of the present application, while reiterating the averments as made in their written statement.

6. I have heard the arguments and perused the material on record carefully.

7. It is well settled that the power conferred under Order 39 Rule 1 and 2 CPC in granting or refusing temporary injunction essentially lies in the realm of discretion of the court. The power, therefore, has to be exercised with the greatest care, caution and in accordance with reasons and sound judicial principles. A person who seeks a temporary injunction must satisfy the Court, firstly that there is a serious question to be tried in suit to dispel cloud of doubt relating to his entitlement and there is probability of plaintiff being entitled to the relief sought by him. Secondly, the Court's interference is necessary to protect him from threatened species of injuries enumerated under Order 39, Rules 1 and 2, CPC which the Court considers irreparable before his legal right, can be established on trial. Lastly, the comparative inconvenience which is likely to ensue from withholding temporary injunction would be greater than that which is likely to arise from granting it.

8. It is admitted position of facts that defendant no. 2 is the absolute owner of suit properties, as such, she has full freedom to deal with the suit properties in the manner as she may deem fit. The allegation pertaining to her mental state is prima facie not supported by any material on record and is a matter of trial. Moreover, in terms of averments of the plaintiffs itself, defendant no. 2 lost her sanity after an accident in August, 2019, while the impugned GPA got executed on 09.05.2018 i.e. more than one year prior to said accident. Thus, the plaintiffs are unable to show prima facie case in their favour and against the defendants. Since, plaintiffs have no clear right or interest in respect of suit properties, balance of

convenience also does not lie in their favour. The plaintiffs have further failed to justify how an irreparable injury, which cannot be compensated in terms of money, would be caused to them if no injunction is granted.

9. Keeping in view the facts, circumstances of the case and observations as above, the application under Order 39 Rule 1 and 2 CPC is hereby dismissed. It is made clear that nothing mentioned herein shall tantamount to an expression on the merits of the case.

Application is accordingly disposed of.

**ANNOUNCED THROUGH VIDEO
CONFERENCING ON 09.07.2020**

**(AKASH JAIN)
ACJ/CCJ/ARC
(WEST)/THC/DELHI**

**This Order contains 5 pages and signed by me and same is
uploaded on the server.**

**(AKASH JAIN)
ACJ/CCJ/ARC
(WEST)/THC/DELHI**

CS No.

Surinder Singh Sadana & Anr. v. Surbir Singh Sadana & Anr.

Through Cisco Webex Video Conferencing

09.07.2020

The matter is taken up through video conferencing in view of the order No. 17/DHC/2020 dated 14.06.2020 of Hon'ble Delhi High Court and order dated 14.06.2020 of Ld. District & Sessions Judge (H.Q.), Tis Hazari Courts, Delhi.

Present: Sh. Rakesh Walia, Ld. Counsel for the plaintiffs. (Mobile No. 9811037999) (Email ID:- ashuwalia9899@gmail.com).

Sh. Arjun Singh Khurana, Ld. Counsel for the defendants. (Mobile No:- 9899498684) (arjuns198818@gmail.com).

Vide separate order of even date announced through video conferencing, application under Order 39 Rule 1 and 2 CPC stands dismissed. A copy of this order be sent to Ld. Counsels/parties on their e-mail IDs as requested.

At this stage, it is submitted by Ld. Counsel for defendants that present suit is not maintainable and same is liable to be dismissed under Order 7 Rule 11 CPC. Ld. Counsel for the plaintiffs seeks time to address arguments on oral application under Order 7 rule 11 CPC moved by the defendants.

At request, put up for arguments on **15.07.2020 at 11:00 AM through video conferencing on CISCO WEBEX.**

(AKASH JAIN)
ACJ/CCJ/ARC(W)/09.07.2020

RC/ARC No. 26110/16

Mukesh Kumar Garg v. Surinder Sethi

Through Cisco Webex Video Conferencing

09.07.2020 (At 11:00 AM)

The matter is taken up through video conferencing in view of the order No. 17/DHC/2020 dated 14.06.2020 of Hon'ble Delhi High Court and order dated 14.06.2020 of Ld. District & Sessions Judge (H.Q.), Tis Hazari Courts, Delhi.

Present: Petitioner in person along with Ld. Counsel Sh. Jaspreet Singh. (Email ID:- jaspreet.law@gmail.com) (Mobile No. 9899641617).

Sh. Sachin Sharma, Ld. Counsel for the respondent. (Mobile No:- 9953154582).

Part arguments heard on behalf of petitioner on the application under Section 151 CPC.

At this stage, Ld. Counsel for the respondent seeks half an hour time to join the meeting again as he has only verbal instructions from the respondent to appear through video conferencing. It is further submitted that he is recently engaged in the present case and wants to go through the contents of the said application. His Vakalatnama is reportedly not on record.

At request, matter be again taken up at 11:40 AM through video conferencing.

(AKASH JAIN)

ACJ/CCJ/ARC(W)/09.07.2020

:2:

At 12:10 PM


Present: Petitioner in person along with Ld. Counsel Sh. Jaspreet Singh. (Email ID:- jaspreet.law@gmail.com) (Mobile No. 9899641617).

None for the respondent.

Sh. A. C. David (Mobile No. 9899291465) (Email ID:- apexlegalnetwork@rediffmail.com), Ld. Counsel for applicant

It is reported by Ahlmad of this court that new link of video conferencing has been duly sent to Ld. Counsels for both the parties on their what's app and they were also verbally informed. The screen shots of the same are also attached herewith. It is further informed by Ahlmad of this Court that respondent was also contacted on his mobile number but he expressed his inability to join the video conferencing. However, none has appeared on behalf of respondent despite waiting on video conferencing for about half an hour.

In the meantime, an application under Order 1 Rule 10 CPC also filed on the dedicated e-mail ID of this Court by Sh. A. C. David, Ld. Counsel for applicant Sh. Mahant Jaswinder Dass. Let copy of this application be sent to the petitioner as well as respondent and their counsels on their email ID.



:3:

Let reply be filed to this application by petitioner with advance copy to applicant. Put up for reply and arguments on application under Order 1 Rule 10 CPC and further proceedings on **30.07.2020 at 11:00 AM through video conferencing on CISCO WEBEX.**


(AKASH JAIN)
ACJ/CCJ/ARC(W)/09.07.2020