

Order No. 21

dt.02.12.15

Today is fixed for hearing the petition u/o 39 rule 1 & 2 read with section 151 of Plaintiff is present by filing hazira asnd also filed an application for extension of the order of injunction. Defendant No. 1 & 2 as well as 3,4 & 5 all are filed hazira through their Ld. Lawyers and Ld Lawyers of all the defendants are present.

Defendant no. 3 Sri Biswajit Biswajit is also present personally.

The application u/o 39 rule 1 & 2 read with section 151 of C.P.C. Along with objection is taken up for hearing. Hd. Ld. Lawyer for both sides. Seen the petition along with objection. It appears from the petition that the plaintiff instituted the present suit against the defendants for a decree for declaration that the money in the MIS Scheme (3 in number) is the money of her which she invested in her name as first holder and in the name of her son as second holder and in the name of her daughter-in-law as third holder and grand daughter as a fourth holder and for that she has entitled to receive the matured money of the said MIS Certificates. It further appears that plaintiff stated that she invested money in the name of herself as first holder and the name of her sons as second holder in 2 MIS Certificates and in another certificate she mentioned her name as first holder and her daughter in law is second holder and grand daughter third holder of the said certificate. She also mentioned that all the certificates are now lying in Princep Street Post Office i.e. under Post Master i.e. defendant no. 2 of the present application. She filed the present application on the ground that the said MIS Certificates all are going to be matured and she is aged about 71 years and has been suffering from Carcinoma and for her treatment she needs money and the defendant no. 3 is her son but as per instigation of defendant no. 4 & 5 he is not looking after his mother i.e. ailing aged plaintiff and at present proforma defendant no. 6 widow daughter of the plaintiff looking after the treatment of the plaintiff and also taking of her care. She further stated that the money which she invested in the 3 MIS Scheme Certificate from her own savings and defendant no. 3 to 5 are only name lenders and the plaintiff only added their names to facilitate withdrawal of the money on maturity of her death. Plaintiff also filed the present application on the ground that

continued 21

if defendant no. 3 to 5 able to withdraw the matured amount in MIC Certificates then the plaintiff shall suffer irreparable loss and injury.

All the defendants are contested the present application by filing written objection and submits that the application u/o 39 rule 1 & 2 of C.P.C. Is misconceived and not maintainable and bad in the eye of law and also have no cause of action against the respondent no. 3 to 5 for filing the present suit

Defendants are also stated that the applicant sufferings from mis-joinder of parties and also mis-joinder of purported cause of action and the plaintiff is not entitled to maintain the instant suit and pray before the court that the present suit be dismissed on the ground of non-joinder of necessary parties and also mis-joinder of parties in any event.

On considering the petition along with objection it is clear that there is no dispute that the parents of defendant nos. 3 to 5 as well as proforma defendant no. 6 was the original owners in respect of money for which they invested the said 3 MIS schemes in the Post Office and it is also not disputed that defendant no. 3 and proforma defendant no. 6 both are brother and sisters and according to law they have equally right to possess the property as a legal heirs of the plaintiff as well as her husband. It is also not disputed that the husband of the plaintiff i.e. the father of defendant no.3 and proforma defendant no. 6 has died and accordingly at present according to law plaintiff herself is the owner in respect of the property and also 1st name holder in respect of the said MIS Certificates and other defendants are 2nd,3rd & 4th name holder so at this state until and unless death of the 1st name holder other name holders have no right title and interest in respect of the said 3 MIS Certificates.

Moreover, it further appears that there is no dispute that the plaintiff is now a Cancer patient and she has compelled to leave her matrimonial house as defendant no. 3 being the son was not look after her though the defendant no. 3 stated through written objection that he was not aware about the disease cancer of his mother.

Under such circumstances as it appears that there is no dispute that the money invested by the plaintiff through MIS Scheme made by the father of defendant no.3 in the name of his mother as well as others and it is further admitted that the father and mother and all along intension of dividing their entire property equally between the respondent no. 3 and respondent no. 6 so at this stage it is clear during the life time of the present plaintiff the defendants have no right title and interest in respect of the 3 MIS Certificates.

Under such circumstances the present court has been compelled to direct upon the defendant no. 1 & 2 for not to allow the defendant no. 3, 4 & 5 to withdraw the entire matured amount of MIS Certificates being No. MIS Account No. 8407533 standing in the name of Smt. Hena Rani Biswas and Sri Biswajit Biswas, MIS Account No. 8407535 standing in the name of Smt. Hena Rani Biswas and Sri Biswajit Biswas

continued 21

and MIS Account No. 8407528 standing in the name of Smt. Hena Rani Biswas and Sri Biswajit Biswas and Smt.Doli Biswas on 14.05.2014. Accordingly, it is,

O r d e r e d

that the petition u/o 39 rule 1 & 2 read with section 151 of C.P.C. Is considered and allowed. The order passed by the present court on 14.05.14 regarding the present application made absolute.

Further extension of interim order of injunction does not require as the injunction order made absolute.

It further appears that the defendant have not yet filed the written statement though appeared on 16.06.14. Further, the defendants are permitted to file written statement on 08.01.16 with cost of Rs. 1000/- without fail.

D/c by me.

Judge,

Judge,