

**In the Court of Civil Judge (Sr. Div.)-III, Kahalgaon, Bhagalpur**  
**Present: - (Md Tasneem Kausar)**

**Title Suit No.- 145 of 2019**

**Kanhaiya Tiwari & Ors .....(Plaintiffs)**

**VERSUS**

**Anil Kr. Tiwari & Ors .....(Defendants)**

**ORDER**

**Later on**

**18.05.2026**

Attendance has been filed on behalf of plaintiffs and defendant. This case is put up before me for order on the injunction petition dated 05.05.2026 filed by defendant namely, Anil Kr. Tiwari, U/O. 39 Rule 1 & 2 read with section 151 of C.P.C. and a rejoinder on the petition of the defendant has been filed on behalf of the plaintiffs on dated 11.05.2026.

Already heard. During hearing, learned counsel on behalf of defendant submitted that, the suit is fixed for the evidence of the plaintiffs. That during the pendency of the suit plaintiffs had filed an injunction petition which has been withdrawn on 27.01.2023 at the cost of Rupees 500/-. After that this learned court has made the party to the legal heirs of Saraswati Devi namely (1) Anuj Kumar Pandey, (2) Manish Kumar Pandey, (3) Mukesh Kumar Pandey, (4) Rupan Pandey, (5) Rita Pandey, (6) Santa Pandey and (7) Mina Bhokta and issued notice to appearance of those persons. When these defendants didn't appear before court after giving sufficient opportunity to them, the court has initiated ex-prate proceedings against these defendants. He further submitted that, the defendant namely, Anil Kr. Tiwari has acquired the land through registered will executed by Badari Narain Tiwary and on that land, defendant is into possession and has cultivated the crop of maize which has been ripped and is hit to cut. The price of the maize crops is minimum of sum of Rupees 80,00,000/- (Eighty Lakh) will deed is on record. That in the meantime Lalan Tiwary had filed a petition U/S 144 Cr.P.C. read with Section 163 of B.N.S.S Act, 2023 for limitation the

proceeding before the learned court of S.D.M. Kahalgaon which has been dismissed on 18.03.2026. That thereafter Anuj Kr. Pandey filed a petition for the limitation of proceeding U/S 144 of Cr.P.C. through Misc. Case No.- 24/2026 against the defendant namely, Anil Kr. Tiwary on the direction of plaintiffs. That the maternal grandfather of Anuj Kr. Pandey & Others namely, Badri Narain Tiwari had also executed a registered will in favour of the plaintiffs on the same day. That the defendant namely, Anil Kr. Tiwari has filed a Probate Case No. 03/2022, which is pending before A.D.J-19<sup>th</sup>, Bhagalpur and plaintiff namely, Kanhaiya Kr. Tiwari has also filed a Probate Case No. 41/2023 on the basis of registered will executed by Badri Narain Tiwari. That Anuj Kr. Pandey has not filed the case U/Sec. 144 of Cr.P.C. against the plaintiff namely, Kanhaiya Tiwari because the case U/S 144 of Cr.P.C. has been filed by the Anuj Kr. Pandey on the direction of plaintiffs purposely loss the crops of maize having of price 80,00,000/- (Eighty Lakh) Rupees. That the learned court of S.D.O. Kahalgaon has initiated without cause during the order dated 18.03.2026 case U/S 144 of Cr.P.C. and restrained the opposite party from cut the ripped maize crops because the crop of maize is destroying naturally into the farm due to ripped crops of maize and bad loss of whether. There is fully chance to delay the entire crops of maize and irreparable loss of defendant namely, Anil Kumar Tiwari. That it is well settled laws that during the pendency of civil suit the proceeding U/S 144 of Cr.P.C. cannot be stand because the suit is being pendency is in the learned competent court. That Anuj Kr. Pandey wants to grab the land of Anil Kr. Tiwari on the direction and suggestions of the plaintiffs. He further submitted that, the Prima-facie case, balance of convenience is in favour of the defendant namely, Anil Kr. Tiwari and if the defendant will not allow to cut the ripped maize crop, defendant will suffer irreparable loss. And lastly has prayed that to grant the injunction or order to Status quo against the plaintiffs and legal heirs of Late Saraswati Devi who are Anuj Kr. Pandey & Others for the ends of natural justice.

In continuation of the injunction petition, the defendant also filed a petition on dated 11.05.2026 and submitted that, in previous petition dated 05.05.2026, due to clerical mistake the cost of maize crop has been wrongly mentioned as Rs.80,00000/- (Eighty Lakh), but it is only considered as Rs. 8,00000 (Eight Lakh).

On the other hand, the learned counsel on behalf of plaintiffs filed

rejoinder on 11.05.2026 and submitted that the impugned petition is not maintainable either in law or on facts. That this is suit for confirmation of Partition Deed and alternatively a relief for partition is asked. That That the impugned petition has been filed without any reason or rhyme. That 144 Cr.P.C. proceeding has still not lost its force. That it is denied that the defendant namely, Anil Kr. Tiwari is in possession of the land as mentioned in the 'WILL' executed by Badri Narayan Tiwari in his favour. That it is not denied that a Probate case is pending, but, most of the property under 'WILL' Anil Kumar Tiwari had sold out individually or as witness to Sale-Deed executed by Saraswati Devi. He further submitted that, Badri Narayan Tiwari had executed two registered 'WILL' both dated 17.05.1997, one in favour of the plaintiffs and another in favour of the defendant. That after the death of Badri Narayan Tiwari, two Probate case was filed, but the plaintiffs and the defendant, all the brothers, had partitioned the suit property which were in both the 'WILL' by signing a Partition Deed dated 23.06.2018 / 25.06.2018 in presence of witnesses and on that basis, mutation was ordered in favour of both the plaintiffs and the defendant , but the defendant namely, Anil Kr. Tiwari, wrongly and illegally began litigation before the Revenue Court on the ground of not taking the said Partition Deed as correct and legal. That in partition between the two parties, it was taken care that whosoever sold out the property in the past will be adjusted from his share of the land and that was the reason Anil Tiwari got lesser area of land than the plaintiffs. That the defendant is in possession of only those lands which were allotted to him as per the partition deed. That so far as 144 Cr.P.C. proceeding is concerned, it is between Anuj Kr. Pandey and Anil Tiwari, and there is nothing between the plaintiffs and the defendant. That even during pendency of a Title Suit, 144 Cr.P.C. proceeding can go on, so it cannot be a ground for the defendant to ask for Injunction. That the plaintiffs have also been enjoying possession of those lands which had fallen into the share of the plaintiffs and they have nothing to take with the land of the defendant. That the impugned petition has been filed mischievously and is completely vague and the prayer is not specific and it is not made clear in the impugned petition, whether Status-Quo or injunction of what is sought. That the defendant has got no Prima-Facie Case nor balance of convenience in his favour and there is no any irreparable loss to him. And lastly has prayed to reject the impugned petition of the defendant filed under Order 39 Rule 1 & 2 read with section 151 of C.P.C.

Heard both sides and perused the case record. On perusal, it transpires that, the plaintiffs have filed this suit for the partition and for the partition deed dated 23.06.2018/25.06.2018 is correct & legal. This suit is pending for the evidence of the plaintiffs. In the meantime, the defendant namely, Anil Kr. Tiwari has filed an injunction petition against the plaintiffs under Order 39 RULE 1 & 2 read with Section 151 of C.P.C.

In order to prove a case for the grant of injunction the court must apply the triple test doctrine: - **1. PRIMA FACIE CASE, 2. BALANCE OF CONVENIENCE**

### **3. IRREPARABLE LOSS**

1. **Prima-Facie Case:** - As per the case of the plaintiffs and they admitted in para 13 of the plaint is that, Badri Narayan Tiwari had given his properties to the plaintiffs and the defendant by two registered deeds of WILL and both dated 17.05.1997 and after the death of Badri Narayan Tiwari, the plaintiffs and defendant had come in possession of those properties under WILL. That the defendant namely, Anil Kr. Tiwari is in possession over the property under WILL acquired by Badri Narayan Tiwari and has cultivated the crop of maize over the said land. From the perusal of the record and documents available on the record, it appears that, Badri Narayan Tiwari executed two registered deeds of WILL on 17.05.1997, one deed of WILL in the favour of defendant namely, Anil Kr. Tiwari and other deed of WILL in the favour of the plaintiffs namely, Anuj Tiwari, Radhe Shayam Tiwari, Rama Shankar Tiwari, Kanhaiya Tiwari & Others. The Ld. Counsel of the plaintiffs submitted that, the defendant namely, Anil Kr. Tiwari has sold out most of the property of WILL. But he didn't file any chit of paper, which shows that, he (*defendant*) has sold the property of WILL. From the perusal of the order dated 18.03.2026 of S.D.M, Kahalgaon, where he dismissed the petition of Lalan Kr. Tiwari filed under Section 144 of Cr.P.C read with section 163 of B.N.S.S Act, 2023 and observed that, the case is not about possession but for title. From the perusal of the report of S.H.O, Bakharapur Police Station dated 17.04.2026, it also appears that, property is in possession of the defendant namely, Anil Kr. Tiwari and he cultivated the crops over the said land. This fact shows that the defendant has the prima facie case in the present

matter. Therefore, this court finds that the defendant has prima facie case in his favour.

2. **Balance of Convenience:** - To see Balance of convenience, it is necessary to compare the case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting. It lies in favour of the defendant namely, Anil Kr. Tiwari as if the plaintiffs are interfering to harvest the crop of maize, which has been cultivated by the defendant over the said land and crops have been ripped now and is hit to harvest and it is worth values of Rs. 8,00,000/- (Eight Lakh). If the plaintiffs & others will interfere to harvest the ripped maize crops, then the defendant may face multiplicity of litigation and may face inconvenience if he wins the case after conclusion of trail. In this case, the defendant is apprehending that his crops will be destroyed, if not allowed to harvest, which is much valuable. Hence, it appears that, the balance of Convenience also lies in favour of the defendant.
3. **Irreparable Loss:** - As discussed above that the defendant namely, Anil Kr. Tiwari is continuing in possession over the said property. There are maize crops over the said property, which have been cultivated by the defendant and if the plaintiffs & others are not restrained to interfere to harvest the ripped maize crops, then it will naturally destroy into the farm and the defendant will suffer irreparable loss. In this regard this court finds that the defendant will suffer irreparable loss if injunction is not granted in his favour.

After Considering the above facts and circumstances this court finds that all the three ingredients of injunction lie in favour of the defendant. Accordingly, the injunction petition of the defendant dated 05.05.2026 is **Allowed. The plaintiffs and legal heirs of Late Saraswati Devi (*Anuj Pandey & Others*) are restrained from interfering in the possession of the defendant namely, Anil Kr. Tiwari or from interfering to harvest the ripped maize crops. It is hereby made clear that the injunction is being granted only in respect of the suit land as mentioned in the injunction petition itself.**

**Let a copy of this order be sent to the concerned S.H.O. The S.H.O is directed to ensure the compliance of this order.**

It is, therefore, prayer for grant of injunction under Order 39 Rule 1 & 2 read with section 151 of the C.P.C is hereby allowed and its rejoinder dated 11.05.26 of the plaintiffs is being disposed off.

Put up on 17.06.2026 for Evidence of the Plaintiff.

**(MD TASNEEM KAUSAR)**

**Civil Judge (Sr. Div.)-III,**

**Kahalgaon**