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In the court of The District Judge-IIIrd, Bhojpur at Ara
Presiding Officer: Sangam Singh
Miscellaneous Civil Appeal No. 23 of 2025
Order dated: 06.08.2026

**Miscellaneous Civil Appeal No. 23 of 2025
Under Order 43 Rule I (r) 151 of CPC**

1. Bolbam Rai, S/o Late Hridya Rai, Resident of Village Jamira, P.S. Ara Muffasil, District Bhojpur at Ara (Bihar).

..... Appellant

Versus

1. Urmila Devi, W/o Late Kalicharan Rai.
2. Om Prakash, S/o Late Kalicharan Rai.
3. Pintu Kumar, S/o Late Kalicharan Rai.
4. Sharwan Kumar, S/o Late Kalicharan Rai.

All are resident of Village Jamira, P.S. Ara Muffasil, District Bhojpur at Ara (Bihar).

.....Respondent 1st Set

5. Ram Gahan Rai, S/o Chhabila Rai
6. Ram Lagan Rai, S/o Chhabila Rai

All are resident of Village Jamira, P.S. Ara Muffasil, District Bhojpur at Ara (Bihar).

.....Respondent 2nd Set

Date of Order : 06.08.2026

Ld. Counsel for the appellant :

Shri Santosh Kumar Sinha,
Advocate.

Ld. Counsel for respondents :

Shri Barmeshwar Singh,
Advocate

ORDER

1. This Miscellaneous Civil Appeal has been preferred by the appellant to set aside the order dated 13.06.2025 passed by the Ld. Sub Judge - VI, Ara in Title Suit No. 68 of 2018, by which the Ld. trial court has rejected the injunction petition filed under order 39, Rule 1 and 2 by the plaintiff /

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appellant.

2. Ld. Counsel appearing on behalf of the appellant has submitted that the plaintiff / appellant has filed a Title Suit No. 68 of 2018 for partition of 1/3 share of Schedule 'K' land of the plaint stating in the plaint of Title Suit that the land in Schedule 'K' is an ancestral and joint property, which has been purchased by the grandfather of the plaintiff and defendant no. 1, in the name of respondent no. 1 / defendant no. 1 in the year 1982 and no partition by means and bounds has taken place till now. Ld. counsel appearing on behalf of the appellant further submitted that during passing the impugned order Ld. trial court has not considered the point that at the time of execution of sale deed i.e. in the year of 1982 respondent no. 1 / defendant no. 1 was minor and he had no source of income to purchase any land in his name. The Ld. trial court has not considered the principle of Hindu Law and wrongly rejected the injunction petition filed by the appellant / plaintiff. The statement of respondent 1st set / defendant no. 1 regarding the partition of joint family property as stated in his written statement at para 14 that no any chit of paper has been filed nor mentioned the date and time of alleged partition. Ld. counsel further argued and submitted that the Ld. trial court has to consider the fact that the sale deed executed by defendant no. 1 to defendant 2nd set / respondent 2nd set in the year 2003 clearly show that land in question is a joint family property and appellant and respondent 1st set are equal share holder in Schedule 'K' property of plaint. During passing of impugned order Ld. trial court ought to consider the case law as reported in B.L.J. 2020 (3) Page No. 446,

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Order 39, Rule 1 & 2, C.P.C Title Suit - Plaintiff has got prima facie case to be adjudicated by the trial court. It has been admitted for adjudication thus it became the duty of the Court to preserve subject matter of litigation by an appropriate order so that same is available at the time of final adjudication and so, Ld. trial court ought to allow the injunction petition as filed by the plaintiff / appellant and also ought to restrain the defendant no. 1 / respondent 1st to alienate the said property as mentioned in Schedule 'K' of the plaint till disposal of the suit. Ld. counsel appearing on behalf of appellant further prayed to allow this appeal and subsequently, set aside the order dated 13.06.2025 passed by the Ld. Sub Judge - VI, Ara in Title Suit No. 68 of 2018.

3. Ld. counsel appearing on behalf of respondents submitted that a rejoinder petition has been filed on behalf of Respondent no. 3, Pintu Rai, in which the actual facts regarding land in question has been disclosed in detail. Ld. counsel further submitted that in real the appellant / plaintiff has no right to get even a single inch of land in Schedule '1' property of the plaint because the land in question is self acquired property of Late Kalicharan Rai and respondent no. 1 to 4 are legal heirs of Kalicharan Rai. He further submitted that Kalicharan Rai living in his village made business of cow & buffalo and its milk used to sell in Ara town by which he used to earn a lot of income and from this income Kalicharan Rai purchased the land in his name given in Schedule '1' of the plaint. Ld. counsel further submitted that Kalicharan Ray purchased the land given in Schedule '1' (Jamima 'KH') of the plaint on 17.02.2003 and on 17.02.2003 the appellant was not

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even born hence there is no concern of appellant with Schedule '1' property of the plaint and appellant has no locus standi to claim for share in Schedule '1' property of the plaint. Thus, the prima facie case and balance of convenience is in favour of respondent no. 1 to 4 and if injunction is granted in respect of Schedule '1' property of the plaint the respondent no. 1 to 4 will face irreparable loss, hence, the instant appeal is not maintainable from any corner of law and facts as well and the same is fit to be dismissed outrightly.

4. One Ramdei Kunwar, W/o Hridyanand Rai appeared and claimed to be intervenor and filed objection petition stating therein that she is the wife of Hridyanand Rai and mother of plaintiff Bolbam Rai and defendant no.1 Kalicharan Rai. Defendant No. 1 Kalicharan Rai has died and the disputed property is selling by the legal heirs of Kalicharan Rai and if all the property will be sold then nothing has been left for her livelihood. She further stated that the land in question had been purchased by her father in law Babu Lal Rai, who was a government servant, and thus, she is also a legal heir of the land in question. She further stated that Kalicharan Rai was minor in 1982 and doing not any business of selling milk, by which he has earned a lot of money.

5. In this context, it is necessary to advert to the relevant portion of the impugned order passed by the learned trial court which is as follows -

"the land purchased by defendant No. 1 was purchased from a stranger, and was purchased in the year 1982, when Bol Bam Rai was not even born. Sale Deed No. 8424 dated 12.03.2022, defendant No. 2 of this suit,

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Hridayananda Rai, has sold land of Khasra No. 2830 and 2831 of Khata No. 289, measuring approximately 1.5 D and 0.2 D, respectively, to plaintiff Bol Bam Rai. Also, through Deed No. 3552 dated 17.05.1988, Ram Pravesh Singh and Devnath Singh sold land to defendant No. 1 Kalicharan Singh. Through Deed No. 6122, Shivmuni Singh, Dharamnath Singh, Ramanuj Singh, and Zarina Devi sold land to defendant No. 1 Kalicharan. Thus, considering all the above documents, it can be concluded prima facie that the property at Jamima No. "Ka" is the land purchased in the year 1982. The Court concludes that, prima facie, the balance of convenience and irreparable loss does not appear to favor the plaintiff. Therefore, the application for injunction dated 07.07.2023 filed by the plaintiff is dismissed".

6. After hearing both parties, perusing all documents available on record, and considering all the above-mentioned facts, it appears that the application for injunction, which was rejected by the learned trial court on 13.06.2025, was filed in Title Suit No. 68 of 2018. Title Suit No. 68 of 2018 was originally filed for the partition of the suit property. It was incumbent upon the court to determine shares of the plaintiff and defendants in the suit property only after the presentation and examination of oral and documentary evidence, as well as due consideration of all other issues in the suit. The case of the appellant is that the properties mentioned in Schedule 'K' are joint properties as these properties were purchased by the grandfather of the appellant and respondent no. 1 Kalicharan Rai, in the name of Kalicharan Rai in the Year 1982. Both the parties are in

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possession of these properties and appellant and his family are entirely dependent on the earning from the Schedule 'K' property i.e. earn his livelihood. The properties mentioned in Schedule 'K' are joint in nature and till date no partition has taken place of these properties and the defendants / repondents are indulged in talking to some persons for selling the properties mentioned in Schedule 'K", whereas, respondent no. 1 Kalicharan Rai in his written statement has claimed this property as his self earned property because in 1982 he used to do dairy business and purchased the properties mentioned in Schedule 'K', from the earning of the dairy business. In support of his case, the appellant has submitted a copy of the Panchayat General Election Voter List 2021 (Bihar), which demonstrates that in the Panchayat General Election Voter List 2021, the age of the opposite party, Kalicharan, was 50 years. The opposite party has nowhere raised any objection against this Panchayat General Election Voter List. Thus, upon mathematical calculation, it leads to the conclusion that in the year 1982, when Kalicharan was allegedly purchased the land from income earned through a dairy business, prima facie his age was only around 11 years. As such, the fact that an 11-year-old child could earn enough money through a dairy business to purchase a substantial amount of land, needs to be decided by the trial court. Both the parties are claiming against each other and in this case the issues have been framed in the Tile Suit 68 of 2018 and at the present stage of the case without leading the evidences from both the parties it cannot be decided that whether these properties are joint or self acquired. But, the Ld. trial court

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holding the land in question is self acquired land of defendants and dismissed the injunction petition, and observed that, "***Thus, considering all the above documents, it can be concluded prima facie that the property at Jamima No. "Ka" is the land purchased in the year 1982. The Court concludes that, prima facie, the balance of convenience and irreparable loss does not appear to favor the plaintiff***". And so without determining the core issue of the suit after hearing both parties and considering the oral and documentary evidence deciding the fact whether this property is joint or separate, the order of rejecting the injunction petition is entirely erroneous.

According to established legal principles, three primary factors must always be considered while granting or refusing an injunction, (i) prima facie case, (ii) balance of convenience and (iii) irreparable loss. The appellant has claimed that they are in joint possession of the land mentioned in Schedule 'K' which is his main source of living and the defendants are claiming this property as their self acquired property and they are in talking with some other persons to sell it, in these circumstances prima facie case and balance of convenience are in favour of the appellant.

In this case the appellant is younger brother of defendant no. 1 Kalicharan Rai, who died on 13.11.2023 in whose favour the alleged properties were purchased by the grandfather of both the parties. The legal heirs of Kalicharan Rai are on record. The appellant has stated that, the suit property is his sole source of livelihood, and if it is allowed to be

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alienated, he will be left with no means of subsistence and irreparable loss will be caused to him; hence, he has prayed for an injunction. In this context, regarding irreparable loss, the Hon'ble Supreme Court has held in **Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass (2004) 8 SCC 488** that, "Unless a case of exceptional nature is made out, the court should not permit a party to a suit to alter the status, or change the nature and character of the property which is the subject-matter of the suit. It is necessary to preserve the property in dispute during the pendency of the litigation so that the ultimate relief sought in the suit is not rendered infructuous or defeated." In an other case **Dorab Cawasji Warden v. Coomi Sorab Warden & Ors. (1990) 2 SCC 117** the Hon'ble Apex Court has also held that, "The relief of temporary injunction is granted to protect the person applying from the injury that he may suffer on account of the violation of his right for which he could not be adequately compensated in damages... The object of the interlocutory injunction is, therefore, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial."

After considering all the above discussed the facts and circumstances of the case all three ingredients (i) prima facie case, (ii) balance of convenience and (iii) irreparable loss, lies in favour of the appellant. Therefore, the Ld. Trial Court erred in dismissing the appellant's injunction application dated 07.07.2023 by its order dated 13.06.2025, merely by considering isolated aspects and arriving at a finding that prima

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facie the suit property purchased in 1982 appears to belong to the defendant, is untenable and contrary to established legal principles. Considering all the above discussed facts and circumstances of the case and the observations held by Hon'ble Apex Court the, Civil Miscellaneous Appeal No. 23/2025 is '**Allowed**', and accordingly, the impugned order dated 13.06.2025 passed by the Ld. Sub Judge - VI, Ara in Title Suit No. 68 of 2018, is set aside. The application for temporary injunction filed by the plaintiff / appellant under order 39 Rules 1 and 2 CPC is **Allowed**.

Dictated and corrected by me

(Sangam Singh)

District Judge – IIIrd
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