

IN THE COURT OF SUB JUDGE-I, JAGDISHPUR

Title Suit Case No.: 591/2009

CIS No.: 591/2009

Date of Order or Proceeding	Order with the Signature of the Court	Office action taken with
19/09/2022	Both sides have filed their attendance. Today case is fixed for hearing and order on plaintiff's petition dated 20.06.22 and show cause cum rejoinder dated 27.06.2022. Ld. Advocate of both sides present in the court. Ld. Advocate of plaintiff pressed his petition dated 20.06.2022 filed under order 39 rule one and two and also section 151 of the code of civil procedure. Ld. Advocate of plaintiff submitted that plaintiff has filed this suit for partition and the meantime on the petition of present defendant number 5 to 8 they added as a party(defendant no. 5 to 8) in the suit and they have also filed their written statement along with the petition for dismissal of this suit on the point of maintainability and the said petition of defendants dismissed by this court on dated 11.02.2020. Ld. Advocate of plaintiff submitted that in this case evidence is going on and defendants are cunning person and trying to cultivate the plaintiff's land forcibly. Ld. Advocate of plaintiff submitted that plaintiff is lady who has also given her objection to local police against the defendant number 5 to 8 but defendant number 5 to 8 are very powerful with man and muscle and they are trying to forcibly dispossess the plaintiff and there is also apprehension of breach of peace between plaintiff and defendant number 5 to 8. Further Ld. Advocate of plaintiff submitted that plaintiff has got prima facie case and balance of convenience in her favour and if the injunction petition of plaintiff will not be allowed plaintiff has put great loss and which cannot be compensated by anyway and prayed for passing the order of status quo against the defendant number 5 to 8. Ld. Advocate of defendant 5 to 8 opposed the said petition by the way of filling their rejoinder dated 27.06.2022. Ld. Advocate of defendant 5 to 8 submitted that plaintiff has filed said petition on the basis of wrong fact therefore said petition is not maintainable in the eye of law. Further Ld. Advocate of these defendants	

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contd. 19-09-2022	submitted that defendants had filed their written statement and in the written statement they have stated that case of plaintiff is barred by the section 11 of the code of civil procedure because the husband of plaintiff Shiv Prasad Ojha had already contested a suit with the defendants bearing Title Suit number 255 of year 1992 in which he was defeated and plaintiff does not have a possession over the disputed land but plaintiff has filed this suit for the partition in which the defendants appeared as a intervener thereafter they made the party as a defendant and they filed their written statement. Further learned Advocate of these defendants submitted that presently this case is running for the evidence of plaintiff and inspite of producing the evidence, Plaintiff has filed said petition only to linger the case. Further learned Advocate of defendant submitted that the Khatiyan of disputed land has been prepared in the name of father of defendant's Keshavar Ojha and they have a title and possession over the disputed land since their ancestors time therefore passing any order on the injunction petition is not justifiable. Further Ld. Advocate of defendant submitted that it is wrong to say that these defendants have filed the petition under section 11 of CPC which has been rejected by the court. These defendants also denied the statements made by plaintiff in his petition and submitted that plaintiff does neither have prima facie case nor balance of convenience in his favour and there will not be any irreparable loss for not passing the injunction order and finally prayed for rejecting the said injunction petition. Heard both side and perused the case record from the perusal of case records it transpires that plaintiff filed this suit for decree of partition in favour of plaintiff and corve out her 1/5 share in schedule A by appointing the survey passed pleader commissioner. From the perusal of case records, it transpires that plaintiff has submitted that the disputed land mentioned in schedule a of the plant has acquired by plaintiff through her husband late Shiv Prasad Ojha and Shiv Prasad Ojha has acquired disputed land from title suit number 68 of the year 1982 and title suit	
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contd. 19-09-2022	1999 of year 1980 and after the death of Shiv Prasad Ojha, plaintiff has acquired right title and interest over the disputed land. From the perusal of case record it also transpires that plaintiff has filed this suit only against the four defendants who are the son of late Shiv Prasad Ojha and later on, on the petition of interveners, defendant number 5 to 8 I added as defendant and these defendants have also filed their written statement. from the perusal of record, it transpires that defendant number 5 to 8 have submitted in their written statement that defedant no. 1 to 4 of this case have already filed a case bearing title suit number 255 of 1992 against the defendant number 5 to 8 in the court of Munsif 3 Ara in which these defendants appeared and contested the suit and on contest the suit was dismissed thereafter defendant number 1 to 4 of this case also preferred title appeal 43 of the year 1998 which also dismissed after hearing. Fuprther the defendants submitted that survey Khatiyani also prepared in the name of Keshava Ojha and they are also paying the rent. Further the defendant submitted that there is a house of defendants in the disputed land in which they are residing. From the perusal of case record, it transpires that this case is running for evidence of plaintiff and this is the case of year 2009. plaintiff as well as defendant no. 5 to 8 are claiming their title and possession over the suit land on the basis of judicial order, so without going through evidence in this case at this stage a presumptive opinion cannot be drawn that prime facie case or balance of convenience is either in favour of plaintiff or in favour of defendant. As regards to the irreparable loss plaintiff has not enumerated specifically that what irreparable loss has been caused to her if this petition is not allowed. After considering the above facts, circumstances of the case petition dated 20-06-2022 of the plaintiff is rejected and its rejoinder dated 27-06-2022 is accordingly disposed off. put up this case record on 11-10-2022 for plaintiff's evidence. Sub Judge-I Jagdishpur	
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