

IN THE COURT OF SUB JUDGE I, JAGDISHPUR, BHOJPUR AT ARA

Title Suit Case No. 240/2013

CIS No.: 240/2013

Date of Order or Proceeding	Order with the Signature of the Court	Office action taken with
20.07.2023	<p>Both sides have filed their hazri. Today the case is fixed for hearing and order on plaintiff's petition dated 17.08.2022 filed under Order 39 Rule 1 and 2 and Section 151 of the Code of Civil Procedure and rejoinder thereon dated 11.04.2023. Heard Ld. Advocate of both sides. Perused the case record.</p> <p>From the perusal of case record, it transpires that plaintiff has filed the said injunction petition saying that he has filed this suit for partition of his ½ share in respect of suit land mentioned in schedule 'Ga' of the plaint by appointment of Survey Knowing Pleader Commissioner by meats and bounds. Further plaintiff submitted that presently case is running for the evidence of plaintiff and during the evidence, defendant no. 1died and his legal representatives substituted and case is fixed for the evidence. Further, plaintiff submitted that defendants started dispute in respect of the suit land therefore the proceeding under provisions of section 144 of the Code of Criminal Procedure initiated by the S.D.M., Jagdishpur which is pending in the Court of S.D.M., Jagdishpur. Further plaintiff submitted that disputed land is a joint Dalan on which defendants trying to construct forcefully and grab the share of plaintiff and due to tense over the suit land, F.I.R. has been lodged. Further plaintiff submitted that prima facie case and balance of convenience is in the favour of plaintiff and if injunction order will not be passed, plaintiff will have to suffer from irreparable loss and finally prayed for passing the injunction order in respect of land bearing khata no. 54 plot no. 526 area 5 decimal situated at mauja Kodhwa, P.S. Jagdishpur, District Bhojpur.</p> <p>Defendant opposed the said petition by his rejoinder dated 11.04.2023 and submitted that this case is pending for the evidence of plaintiff and plaintiff is delaying the trial of this case by filing several petitions. Further defendant submitted that plaintiff has filed this case for partition of the suit land mentioned in schedule Ga of the plaint and plaintiff has not sought the relief of partition for the land mentioned in schedule 'Ka' and 'Kha' of the plaint deliberately. Further defendant submitted that plaintiff has admitted himself in para 5 of plaint that partition already took place in between legal heirs of Kalicharan Singh and Har Ballam Singh and the name of co-sharer have also recorded in the possession column of survey khatiyan and they are also paying revenue sepatly. Further defendant submitted that plaintiff wrongly pleaded in para 6 of the plaint that the suit land mentioned in schedule 'Ga' of the plaint is in the joint possession of plaintiff and defendants but real fact is that partition in respect of suit land mentioned in 'Ga' already taken place in between their ancestors and they are in possession as per their share. Further defendant submitted that plaintiff has prayed for passing the injunction order in respect of land bearing khata no. 54 plot no. 526 area 5 decimal which shows the bad intention of plaintiff because schedule 'Ga' of the plaint also include the land bearing khata no. 144 plot no. 484,485 and 527. Further defendant submitted that plaintiff has mentioned the fact relating to the case u/s 144 of Cr.P.C. but proceeding under section 144 of Cr.P.C. has been dismissed after hearing both sides and order has been passed against the plaintiff. Further defendant submitted that plaintiff has wrongly mentioned that disputed land is a joint Dalan in which</p>	

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defendants are trying to construct with view to usurp the plaintiff's share but real fact is that defendant's share has been demolished due to heavy rain therefore, defendants are repairing their own share. Further defendants submitted that partition already took place in between parties through compromise for which affidavit cum compromise papers have been prepared and it has been attested by Notary public Sri Surendra Kumar Singh, Jagdishpur and said compromise papers prepared in the direction of S.H.O., A.S.I. Sudarshar Ram, Manniya Mukhiya Rajni Kanat Pandey, Manniya Mukhiya Panchayat Siyaruan, Choukidar and in presence of them, said compromise paper was executed on 20.12.2015 and this compromise took place after passing two years of filing of this case. Further, defendant submitted that as per that compromise, the suit land mentioned in schedule 'Ga' allotted in the share of defendant which plaintiff no. 1 also admitted in his evidence. Further defendant submitted that Ram Pati Singh has been retired from the post of Teacher from High School who is 80 years old and he is only residing in the village with his elder son and other defendants residing outside of Bihar and finally submitted that plaintiff does not have prima facie case nor balance of convenience and there is no irreparable loss to the plaintiff, if injunction order will not be passed and finally prayed for rejection of said petition. On the perusal of case record, it transpires that plaintiff has filed this suit for the partition of suit land mentioned in schedule 'Ga' of the plaint saying that suit land mentioned in the schedule 'Ga' of the plaint is a joint Dalan of both side for which no partition took place as yet and defendants are started construction over the suit land mentioned in schedule 'Ga' of the plaint with intention to usurp the share of plaintiff whereas defendant submitted that partition took place in between the parties on the basis of compromise in the presence of S.H.O., A.S.I. Sudarshar Ram, Rajni Kanat Pandey, Mukhiya Panchayat Siyaruan and Chaukidar and the share of defendants have been demolished due to heavy rain and they are repairing the same. In the present case, it is admitted fact that both side are from the same family and partition in respect of land mentioned in schedule K and Kha have already been taken place in between the parties and plaintiff claims that no partition took place in respect of suit land mentioned in the schedule 'Ga' of the plaint whereas defendants denied the same and submitted that schedule 'Ga' property has been also divided moreover defendant submitted that their share have been demolished due to heavy rain and they are repairing the same. Thus, in the circumstances mentioned above, it becomes a point to look into in course of the trial.

Hence, in the fact and circumstances of this case, this court finds that the plaintiff has failed to make out a prima-facie case for the purpose of the temporary injunction and balance of convenience also does not lie in the favour of plaintiff and the plaintiffs will not suffer any irreparable loss if the temporary injunction as prayed is not granted. Therefore, instant injunction petition dated 17.08.2022 is rejected. Put up on 10/08/2023 for plaintiff's evidence.

Dictated

Sub Judge-I,
Jagdishpur, Bhojpur.