

THE COURT OF SUB- JUDGE JAGDISHPUR (BHOJPUR)

TITLE SUIT NO. 205/2016

ORDER U/O 39 R 1 & 2 r/w SECTION 151 OF C.P.C

1.Both side have filed hazri. On previous date, I have heard the plaintiff on his petition dated 03.11.2017 filed U/o 39 R 1 & 2 r/w section 151 of C.P.C on behalf of the plaintiff alongwith the affidavit in support of the petition. A show-cause of this petition has been filed on behalf of the defendants 1, 2 and 5 on dated 08.03.2018.

2.The submission of the plaintiff is that she has brought this suit for partition. The defendants are trying to took possession over the suit land and they are trying to sale the same. If the physical nature of the suit is changed the plaintiff will sustain irreperable loss. The plaintiff has prima facie case in her favour. Hence the defendant be restarined to sale the suit land.

3.The defendants have submitted in their show-cause that the plaintiff has not cleared that what kind of construction the defendants are willing to do over the suit land. Neither they have disclosed that which land and to whom they are willing to sale. The defendants are not willing to sale the land nor they are trying to change the nature of suit land. The plaintiff has brought this false case and he has no any prima facie case in her favour. Neither she has balance of convenience in this case. Hence this petition is fit to be rejected.

4.I have perused the suit record along with relevant documents. I find that the plaintiff has brought this suit for partition. Her case is that the suit land has been recorded in the name of Paras Thakur, Ramjanam Thakur and Hari nandan Thakur. The plaintiff and defendants are legal heirs of these persons and the plaintiff has 1/20 share in the suit land. The other defendants have also share in the suit land as the suit land is still joint in possession of both side. The defendant's reply is that the plaintiff has given wrong genelogy to grab share of other co-sharer. It has further been stated that a separation has took place in the family and no any property is joint now. Some land are purchased from personal fund.

5.Now considering all above discussed facts, circumstances and documents filed in this suit, I find that this is an admitted fact that the most of suit land is ancestral land of both the plaintiff and defendants 1st party. There is dispute on some land that whether that is ancestral or purchased land in personal capacity. Both side admits that they have share in the suit land. However it is the matter of trial that how much share they have in the suit land or whether partition has already been done and the plaintiff has no more share in the suit land. Hence both side have equal right to enjoy the property and no one can be deprived to use this. The plaintiff has also not specifically stated that which kind of hindrens the defendants are creating. In this regard, I find that the plaintiff has no any prima facie case in his favour at this stage and balance of convenience is also not in her favour. Moreover, the plaintiff will not sustain any irreperable loss if the injunction is not granted in her favour.

Accordingly, I find that this injunction petition has no merit. Hence rejected and disposed of.

Put up on

for appearance of other defendants.

(Mithilesh Kumar)
Sub- Judge