

In The Court of Civil Judge Jr. Div, Jagdishpur (Bhojpur)
Title Suit No. 234/23
Chandramahal.....Plaintiff
vs.
Rakeshlal Srivastav.....Defendant no 1
Pappu Lal.....Defendant no 2
Shashi Bhushan Lal.....Defendant no 3
Rajulal alias Rajeev Ranjanlal.....Defendant no 4

Date of Order or Proceeding	Order with the Signature of the Court	Office action taken with date
19.09.25	Plaintiff is on attendance. Defendant are on the attendance. Defendant has filed rejoinder to petition dated 08.09.23 along with list of few rulings and pictures today. On call both parties along with their Ld. counsels appeared and was being heard on the petition dated on 08.09.23 under Order XXXIX, Rule 1 & 2 and Section 151 of the CPC along with other similar petitions wherein they prayed to be heard on injunction petition. On perusal of record, it appears that the Suit was filed and admitted on 2.8.23. issue has been framed on dated 19.04.25. interim injunction order to maintain status quo has been allowed by predecessor court on condition that the status quo order will remain in force till the defendants appear and file a reply to the injunction application or file a reply to the show cause notice and until final order is passed on the basis of merits. Along with this, the plaintiff is directed to issue a notice for filing a reply to the show cause notice by ordinary or registered post and the plaintiff is also given the right to send a copy of this order to the defendants for information. Therefore, since showcase and written statement as well has been filed and parties has pressed the petition and prayed for hearing on injunction petition, the record is put for hearing and order on injunction petition. Case of the plaintiffs /petitioner: The humble petition on behalf of the plaintiff U/O - XXXIX Rule 1 and 2 of CPC on dated 08.09.23 which is verified and supported by an affidavit and prayed therein as follows: • That this suit has been filed by the plaintiff to remove the encroachment made by the defendants on his ancestral land, details of which are given in schedule No. 2. • That after the service of summons on the defendants, the defendants have further accelerated the construction work on the disputed land and are changing the condition of the disputed land by filling it with soil. • That it is necessary to restrain the defendants from changing the status of the disputed land.	



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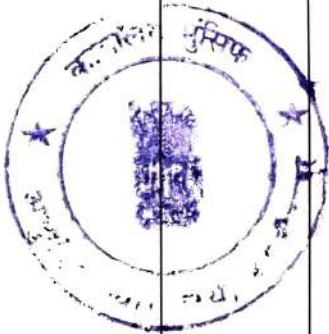
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- That the plaintiff has prima facie case and balance of conveniences in the disputed land in the present case, which is mentioned in schedule No. 2. If the defendant are not prevented from changing the nature of the disputed land during the trial, then the plaintiff will suffer huge loss.
- Therefore, the plaintiffs has prayed temporary injunction should be passed to stop the plaintiff from carrying out construction work on the disputed land and from changing its nature.

Case of the defendant: The humble rejoinder on behalf of the defendants wherein they prayed as follows:

- The present suit was filed by the plaintiff in the court on 31.05.2023 and the petition for injunction was filed on 08.09.2023.
- The defendants appeared in the court on 30.11.2023 and gave a time petition and prayed for more time to filed written statement, they filed their written statement on the scheduled date 23.02.2024.
- The defendant came to know from inspection of the record that an application for interim injunction was filed on 08.09.2023 while the defendants were not even present in the case.
- This order has been passed by the Hon'ble Court on the interim injunction after hearing only the plaintiff side that status qua order is passed only till the defendant side appears in the case and files written statement and the status quo order passed will be considered automatically cancelled once written statement is filed.
- It has been mentioned in the plaintiff's application that the case is related to removal of encroachment done by the defendants, whereas it has not been mentioned in which Khasra the encroachment has been done and how much encroachment has taken place.
- The application of the plaintiffs is invalid and illegal. The plaintiffs should have filed an application for deputing an Advocate Commissioner for site inspection along with the investigation application, but the plaintiffs did not get the Advocate Commissioner deputed for confirmation of their statement. Due to this it is not clear whether the construction work of the defendants was being carried out on their own land or not. Also, until the plaintiffs get an survey



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knowing pleader commissioner appointed by the Court and a comparative map of the site is not prepared by matching the CS survey map and the RS survey map, then saying that the defendants have encroached is wrong and is an illegal statement.

- The plaintiffs have no prima facie case and the balance of convenience is also not in favour of the plaintiffs and the plaintiffs have not suffered any injury from the date of filing of the suit till date.
- The defendants CS survey khatian is made in the name of their ancestor Late Visheshwar Lal and others, whose CS Khata No. 655, CS Khasra No. 2269, area 7 decimal with house and courtyard. and CS Khasra No. 2270, area-15 Decimal is shahan and CS Khasra No. 2394, area-12 Decimal with house and courtyard have been prepared. And out of which RS khata-85, RS Khasra No. 3912, area-12Decimal with house and courtyard has been prepared and therefore until the measurement is not done on the spot by a survey knowing pleader commissioner, it is automatically wrong to say that encroachment has taken place.
- The plaintiffs got interim relief as staus quo on dated 08.09.2023 and during this period the plaintiff got a lot of time but they the deliberately did not get appointed Advocate Commissioner for physical verification to bring the truth. And actually, the truth is that the defendants' mud wall was about 25 to 30 inches wide which had fallen and in place of the wide mud wall, a 10-inch brick wall has been built and the remaining land left from the wide mud wall belongs to the defendants. The plaintiffs deliberately kept the remaining land in the 10-inch brick wall with the intention of grabbing the remaining land, a false case has been filed and the application for injunction has also been submitted in a wrong manner.
- This is the prima facie case of the defendant and the old survey khatian and new survey khatian documentary proof photocopies are filed and the order passed on the plaintiff's injunction petition automatically cancelled after the defendant appeared in the court and after duly examining the documents, the injunction petition of the plaintiff should be dismissed with costs.
- The old wall built 100 years ago by the defendants was on their own land and the newly constructed wall is also on the defendant's own land.

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- Therefore, by filing this show cause, the defendant has submitted that the application for injunction of the plaintiff is baseless and without any merit and it should be dismissed with costs so that the defendants may get justice.

Discussion of the facts and relevant laws:

After hearing the rival contentions and submissions of the Ld. Counsels of the both parties and on perusal of case record along with the aforesaid instant petition and its rejoinder, it transpires that this suit has been filed in the year 2023, for declaring that suit land is ancestral property of plaintiffs and also for declaring title of plaintiff in respect of suit land mentioned in schedule no 02. Moreover, after ascertaining the rights and interest of the plaintiff on the suit land and the encroachment done by the plaintiff should be measured and removed to the extent deemed appropriate by the Commissioner and after removal of encroachment by the defendants the plaintiff should be given possession.

Therefore, let's look into maintainability of this instant petition dated 31.03.25 under Order XXXIX rule 1 and 2 is concerned, it is relevant to note here that Order XXXIX Rule 1 (c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant through any illegal advancements trying to convert the natural features of the suit property or otherwise cause injury to the plaintiff in relation to the suit property, then the Court may order grant of temporary injunction to restrain and prevent such act as the Court deemed fit. It is an established principle of law as stated in "*Kishorsinh Ratansinh Jadeja vs Maruti Corporation & Ors (Civil Appeal No. 2186-2187 of 2009) (Arising out of S.L.P.(C) No.12854-12855 of 2008)*" that for passing an order over the petition of injunction, the court has to take into consideration three important ingredients before deciding injunction petition i.e. 1. Prima facie case 2. Balance of convenience and 3. Irreparable loss to the parties. The absence of any of three ingredients will cause dismissal of the petition for injunction. The burden of proving the same is upon the petitioner. For the sake of convenience, the aforesaid points will be discussed separately.

1. Prima-facie Case:

Prima facie case is not to be confused with *prima facie* title, which has to be established, on evidence at the trial. Only *prima facie* case is a substantial question raised, *bonafide*, which needs investigation and the decision on merits [*Dalpat Kumar v Prahlad Singh, AIR 1993 SC 276 (277); Sachi Prasad Mukherjee v. Pampa Kumar, AIR*



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2004 Cal 310]. In the line of abovementioned case to make out a *prima facie* case for temporary injunction, it is not required that the party should establish its title but it is enough if the party can show that it has a fair question to raise as to existence of its legal rights. In the instant case, the plaintiff is putting its claim over the suit land by asserting that the suit-land is their ancestral land whose khatian is prepared in name of father of plaintiff & others and also filed several documents in its support. The land mentioned in schedule 1 has been given to Kamta lal father of plaintiff and uncle in partition. After death of plaintiff uncle (issueless) property vested to father of plaintiff being legal heir. Plaintiff has share in fathers' property. Hence, it appears that some real question of controversy is involved in this case which requires adjudication on merits. Whatsoever, the *prima-facie* case is tilting in favour of the plaintiffs. Satisfaction that there is a *prima facie* case by itself is not sufficient to grant injunction. The court further has to satisfy that noninterference by the court would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession [Dalpat Kumar v Prahlad Singh, AIR 1993 SC 276 (277)].

2. Balance of convenience:

When the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff. Hence, according to the pleadings made by the parties, it appears that plaintiff is having apprehension that the Defendant has undertaken widening/construction of the house and other similar work on suit land. As per anchal report physical feature of (schedule 1) khesra 3903 there is *pakka makan* of defendant, khesra 3896 there is bricks' wall of plaintiff himself and in khesra 3895 there is *Ett Ka Ota* of defendant.

Thus, both plaintiffs and defendants appear at fairly even situation as to balance of convenience. It is settled principle that "If the balance of convenience is fairly, even then, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by material produced on hearing of the application as to which there is no credible dispute" [Dalpat Kumar v Prahlad Singh, AIR 1993 SC 276 (277)].

Since in the case in hand, as per plaint encroachment is accepted by plaintiff, Anchal report has been filed by the plaintiff itself and as per plaintiff relief no 1.

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Plaintiff has admitted he is not in possession of encroached land, as plaintiff has prayed that encroachment to be removed and possession be restored. Therefore, without establishing possession, an injunction to prevent interference with that possession generally cannot be granted is a settled principle, as injunctions are primarily concerned with protecting existing lawful possession. A plaintiff must prove they are in lawful possession of the property to maintain a suit for an injunction, especially for a permanent injunction. In case in hand there is no report of pleader commissioner and plaintiff has admitted that he is not in possession, their suit for injunction is typically may not be allowed. Thus, at this juncture it transpires that if injunction is refused the potential harm to the plaintiff less than against the potential harm to the defendant if the injunction is granted.

Thus, no materials or evidences were ever been placed by the plaintiff which could have shown the fact that if the injunction order is not passed in their favor, the plaintiff had to face any hardship or hurdles So relative strength appears to be in favour of defendant. Therefore, the balance of convenience not seems to be in the favor of plaintiff/petitioner.

3. Irreparable Loss

In *Shiv Kumar Chadha v. Municipal Corporation of Delhi*, a Bench of three Judges of this Court held that "a party is not entitled to an order of injunction as a matter of course. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles-ex debito justitiae. Before any such order is passed the court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. And as held by the Apex Court in (1983) 4 SCC 625; AIR1982 SC 1272, "The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that the injury must be material one which cannot be adequately compensated by damages". Likewise, it has been held in *MP Cancer Chikitsa Evam Sewa Samiti v. Sanjeev Saxena*, 2004 (4) MPLJ 267 (272) (MP), "Even if the plaintiff has *prima facie* case in his favour that itself would not entitle him to get relief of temporary injunction the

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court has to further consider whether the party seeking extraordinary relief of injunction could be compensated in terms of money and whether the balance of convenience lies in his favour.”

In this case plaintiff has sought the present relief of temporary injunction stating that Defendant are forcibly carrying construction and building a brick wall on the disputed land but defendant has denied and defendant is ready for an inquiry can be conducted by an advocate commissioner so that it becomes clear on which Khesra the defendant is getting the work done and then the truth will be revealed before the court. Therefore, in absence of inspection and report of commissioner, it is not clear that defendant is trying to change the nature of suit land through construction. Moreover, when record is fixed for plaintiff evidence. Similarly, as discussed if the plaintiff does not have possession, a court may find it necessary to hear evidence on title and possession before deciding on the injunction, potentially leading to a dismissal of the bare injunction suit if possession is not established. Further, it is worth to mention here that the plaintiff in their instant petition had mentioned that “the defendants are trying to construct” seems vague and baseless. Hence, the plaintiff has failed to prove the irreparable loss because Plaintiffs had not produced any fact that how the defendants are carrying construction works. Because both sides has adduced picture of construction which neutralizes each other submission. Further, even in the later stage if plaintiff succeeds in their case, plaintiff can adequately be compensated by awarding damages for use and occupying the suit property by the defendants.

To sum-up, in the light of the aforesaid discussions and in the facts and circumstances of the case, the injunction petition dated 08.09.23 filed by the plaintiffs does-not deserves attention of this court at this juncture. Therefore, on the basis of above discussion it can be said that although plaintiff has a *prima facie* case but balance of convenience lies not in his favour and injury can be compensated in term of money which can also be compensated by way of damages at the end of the trial as relief claimed by petitioner.

Furthermore, even if the Plaintiffs were to succeed at a later stage, they can be adequately compensated by awarding damages for the Defendants' use and occupation of the property. The Court finds no ground to issue a

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temporary injunction.

Order

For the reasons stated above, the instant petition dated 08.09.2023, filed by the Plaintiffs under Order XXXIX, Rule 1 & 2 of the CPC, is hereby **DISALLOWED** and **DISMISSED**.

Consequently, the interim status quo order previously granted by the Ld. predecessor court is **VACATED** with immediate effect.

Let a copy of this order be communicated to both parties and their respective counsels along with its related Police Station.

A free copy may be supplied to concerned parties.

Put up on dated
Proceeding.

for plaintiff evidence and further


19.9.25
(Chandan Paswan)

Civil Judge Jr. Division
Jagdishpur (Bhojpur at Arrah)

