

IN THE COURT OF SUBJUDGE-I, PIRO, BHOJPUR

Title Suit No.18 of 2023

Baban Singh and othersPlaintiffs

Versus

Musmat Sushma devi and othersDefendants

Sl. no.	Date of order of proceeding	Order with signature of the Court
1	2	3
06-02-2025	The instant record has been fixed for order today over petition dated 17-04-2023, filed on behalf of plaintiff under Order 39 Rules 1 & 2 read with Section 151 C.P.C against defendants. The defendant no. 1 and 8 has filed its rejoinder dt. 24-07-2023 to the said petition of the plaintiff. The defendant no. 5 and 6 has put “no objection” to the said petition. It is stated in the petition dated 17-04-2023 that plaintiff is having unity of title and jointness of possession over the suit land since long in favour of plaintiff. Plaintiff has submitted that he has right over suit land due to reason that the suit land is <i>Mourisi</i> land of the plaintiff and defendants. Plaintiff has right over the suit land due to as a donee of the gifted property by Parano Devi and plaintiff is continuing possession peacefully over the suit land since long. It is further submitted that the suit is filed for partition of the suit land and declaring the gift deed by the defendant first set to the other defendant as null and void. It is also highlighted that the defendants with intent to change the nature of suit land started alienating the suit land in the favour of other defendants. Defendants are trying to disposes plaintiff and also planning to change the nature of the suit land to their prospective purchaser upon which defendant does not have any right, title over the suit land. Further it is stated that the defendant are illegally is in the process of obtaining the possession of suit land and try to make scuffle between the plaintiff and defendant. The plaintiff is in the possession of suit land since long and defendants without any right and with the bad intention intend to grab the suit land in their hands. It is stated by plaintiff that defendant did not have any right of the possession over the suit land and defendants threatens to sale the suit land to the other party and started illegal possession over the suit land. Further plaintiff pleaded that the defendant disturbing the peaceful possession of plaintiff. Hence plaintiff prayed for injunction over the suit land. It is further advocated that Defendant, being the powerful person forcefully trying to disposes the plaintiff upon which in the defendant does not have right over the suit property. The plaintiff stated that prima facie case, balance of convince is in his favour and it will be irreparable loss if the defendant not to be restrained from alienating the suit land and pray to grant injunction over the schedule property. The defendant no. 5 and 6 has put “no objection” to the said petition. In the contra, the defendant no. 1 and 8 upon show cause filed its rejoinder dt. 24-07-2023 stating that the defendant is in the possession of suit land and plaintiff has filed this suit for illegally grabbing the suit land. It is further stated that plaintiff is claiming falsely over the suit land which is plaintiff and defendant first set got the suit land in gift by their mother and the plaintiff brought this suit for partition of the suit land. The defendant no. 5 and 6 are the relative of the plaintiff and with the bad	

intention the said plaint has been filed by the plaintiff. Hence there is prima facie case in favour of defendants. It is further stated that the said petition has filed by plaintiff with the bad intention of grabbing the suit land. It is also stated by defendant that the plaintiff himself sold the suit land in favour of his wife that is defendant no. 6 and filing this frivolously injunction petition. It is further stated that the plaintiff at one side sold the suit land in favour of defendant no. 5 and 6 and on the other side filing this petition which is totally misconceiving the suit land. Defendant further stated that all the land has been obtained by him in the gift by her mother and defendant is in continuation of possession of suit land.

Perused the record, it transpires from the rejoinder of the defendant that plaintiff has no right over the suit property and there is no prima facie case, balance of inconvenience in favour of plaintiff. It is further stated that the fact narrated in petition is false, vexatious and based on fabricated facts. It is further stated that the documents executed in favour of defendant no. 5 and 6 is absolutely wrong. The suit land belong to defendant and defendant is in possession of suit land since long and further defendant stated that plaintiff are powerful persons and intend to grab the suit land by filing the suit. The plaintiff is not having possession and hence, the suit is filed after limitation period & No balance of convenience, prima facie case, irreparable loss occurred in favor of plaintiff.

Heard the arguments put forth by the Id. Counsel of the both side and perused the case record. It is an established principle of law that for passing an order over a petition of injunction, the court has to look into three important ingredients i.e. 1. Prima facie case 2. Balance of convenience and 3. Irreparable loss to the parties. The absence of any of the three ingredients will cause dismissal of the petition for injunction. The burden of proving the same is upon the petitioner-plaintiff.

Prima facie case : while pressing the petition, the Id. Counsel on behalf of plaintiff submitted that has a good prima facie case in his favour, hence balance of convenience is also his favour. If the defendant are not restrained from changing the nature of the land, the plaintiff will be put to irreparable loss which could not be compensated in terms of money, hence the prayer of the plaintiff be allowed and the order of ad interim injunction be passed in favour of the plaintiff, restraining the defendant from changing the nature of the suit land, alienating or transferring the suit property till the disposal of the suit. It is further submitted that the schedule property belongs to plaintiff and defendants does not have right over the suit land and Hence, prima facie case and balance of convenience is favour of plaintiff.

On the other side the Id. Counsel of defendants stated in rejoinder that defendant are in possession of suit land being gifted land. Hence there is no prima facie case in favour of plaintiff. And thereby no balance of inconvenience to the plaintiff.

After considering the entire facts of the suit, the documents available on record as well as the submissions advanced on behalf of the parties, it appears that both parties are claiming their right, title, interest and possession over the suit land, schedule property of the plaint. There is no such document available on record showing strong prima facie case in favour of the plaintiff, until and unless some more cogent documents or oral evidence comes on record in course of trial.

Balance of Convenience:- Since, both parties are claiming their possession over the land and the materials available on the record are not so forceful, which may show that the balance of convenience in favour of plaintiff. The documents do not support the plaintiff's case. Hence, the balance of convenience also does not appear to be in favour of the plaintiff.

Irreparable Loss :- The plaintiffs have not specifically stated as what irreparable injury shall be caused to them, if injunction as prayed will not be granted or they have no other remedy open by which they can protect themselves from the consequences of such apprehending injury. The expected loss caused to the plaintiffs have not been brought forward before this court, which may be stated as irreparable. Moreover, there exists no certain pecuniary standard to measure the expected injury, which cannot be compensated to the petitioners.

So, from the discussions made above, it is crystal clear that the plaintiffs-petitioner will have no irreparable injury, which can not be compensated in terms of money. In view of the discussions made above, I find that no irreparable loss is going to cause to the plaintiff, which can not be compensated. Hence, considering all these aspects of this case, on the basis of discussions made above, I find & accordingly hold that the petition dated 17-04-2023 filed on behalf of the plaintiffs under Order 39 rules 1 & 2 is not maintainable at this stage. Accordingly, the petition dated 17-04-2023 is hereby rejected.

Put up on for onward proceeding.

(Dictated)

Sub-Judge I
Bhojpur at Ara