

IN THE COURT OF Civil Judge (Sr. Div.)-I, PIRO, BHOJPUR
Title Suit No. 123 of 2018

Raj Kumar Pandey

.....Plaintiff

Versus

Kanhaya Pandey & others

.....Defendants

Sl. no.	Date of order of proceeding	Order with signature of the Court
1	2	3
02-02-2026	<p>Attendance has been filed on behalf of both the parties through learned counsel. The instant record has been put up for order today over petition dated 06.09.2019, filed on behalf of plaintiff under Order 39 Rules 1,2 & 3 read with Section 151 C.P.C against defendants. The defendants no. 1 & 2 have filed their rejoinder dt. 23-08-2023 and 22.11.2019 respectively to the said petition of the plaintiff against the plaintiff's prayer.</p> <p>It is stated in the said petition that the plaintiff has brought this suit for declaration of title over schedule 2 property of the plaintiff and also for declaration of the sale deeds executed in favor of defendant no. 2 as null and void. It is further stated that defendant no. 1 without any right and title has executed two sale deeds with regard to the property mentioned in schedule 2 of the plaintiff in favor of defendant no. 2. The said defendant no. 2 being a lady is wanted to take undue advantage and is intending to change the physical feature of the properties. The schedule 2 property is the purchased property by the ancestor of the plaintiff and without any right, title, the deeds have been executed in favor of defendant no. 2 who is trying to change the physical feature and thereby the plaintiff may suffer irreparable loss. On these grounds, the plaintiff prayed to grant injunction restraining the defendant no. 2 from changing the physical feature as well as restraining to alienate the schedule 2 properties and further to restrain from interfering the possession of the plaintiff over the disputed land.</p> <p>The rejoinder which has been filed on behalf of defendant no. 1 on 23.08.2023 with a prayer to reject the petition filed on behalf of plaintiff on 06.09.2019 on the grounds that on the disputed property, plaintiff has no right, title and possession over the schedule 2 land. Defendant no. 2 has done construction work and boundary wall has been made on the same after purchasing the same from defendant no. 1. Defendant no. 2 has sold the land of his share relating to schedule 2 property and the same has been accepted by the plaintiff in para 2 of his plaintiff. Plaintiff has wrongly state in para no. 3 of his injunction petition that defendant no. 1 did not appear in the suit. <i>ex-parte</i> order has been passed in this suit but defendant no. 1 appeared on 15.02.2020 and submitted his written statement. It is not appropriate to impose an injunction on the house where defendant no. 2 is living. There is no right, title and possession of plaintiff over the schedule 2 land. On these grounds, the plaintiff's injunction application deserves to be dismissed.</p> <p>The rejoinder which has been filed on behalf of defendant no. 2 on 22.11.2019 with a prayer to reject the petition of the plaintiff that injunction petition filed on behalf of plaintiff is not maintainable in the eyes of law. It is further submitted that there is no prima facie case of the plaintiff for issuance of injunction and the plaintiff has not submitted even a chit of paper to show his exclusive title over the schedule 2 land. On these grounds, the injunction petition deserves to be dismissed.</p>	

Heard the arguments put forth by the ld. counsel of both sides and perused the case record. It is an established principle of law that before 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 : Prima facie case is a substantial question raised bona fide which needs investigation and a decision on merits. Satisfaction of court that there is a prima facie case by itself is not sufficient to grant injunction, as opined by Hon'ble Supreme Court in case of **Dalpat Kumar vs. Prahlad Singh, AIR 1993 SC 276**. While pressing the petition, the learned counsel on behalf of plaintiff submitted that has a good prima facie case in his favour, hence balance of convenience is also in his favour. If the defendants are not restrained from dispossessing from 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 interim injunction be passed in favour of the plaintiff, restraining the defendant from 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 do not have right over the suit land and hence, prima facie case and balance of convenience is in favour of plaintiff.

On the other side the learned counsel of defendants stated in their rejoinder that defendants are in possession of suit land being purchaser. Hence, there is no prima facie case in favour of plaintiff. And thereby no balance of inconvenience to the plaintiff.

While determining whether the prime facie case is made out, the relevant consideration is whether the evidence led by the plaintiff. It is possible to arrive at the conclusion in question and not whether that was the only conclusion that could be arrived at, on that evidence in this case there is question to be decided by this Court on the basis of evidence of plaintiff and parties. Thus, there appears a prima facie case in favor of the plaintiff.

Balance of Convenience:- The balance of convenience must be in favor of grant of interim injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief of injury which is likely to be caused to the parties if the injunction is refused and compare it with that what is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury, the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued, as observed by Hon'ble Supreme Court in case of **Maria Margarida Sequeira Fernandes vs. Erasmo Jack De Sequeira, (2012) 5 SCC 370**.

Balance of convenience implies that the comparative troubles or inconveniences which is likely to arise from the issuance of injunction are lesser than the ones arising from withholding the injunction.

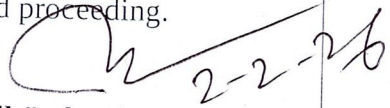
Thus, on the basis of materials available on record it appears that the comparative mischief, hardship or inconvenience which is likely to be caused to the plaintiff may not be greater than which is likely to be caused to the present defendants. The plaintiffs have been unsuccessful in proving their possession over disputed land. This petition is pending since 2019 and the plaintiff could not bring any material before this Court to prove his possession over the disputed land. Moreover, the plaintiff could not produce anything in support of his allegation that physical feature of the disputed land are being changed. Thus, it appears that the balance of

convenience does not lie in favour of plaintiffs.

Irreparable Loss :- Here it is the duty of the plaintiff to prove that he will suffer irreparable loss if injunction is not granted. In the case of *Dalpat Kumar vs. Prahlad Singh, (1992) 1 SCC 719* Cardinal principle for temporary injunction was considered where the court observed that the party seeking injunction will incur "irreparable injury" to the party seeking relief as a result of non-interference of court and that there is no other remedy except the injunction and the same is needed by the party to protect themselves from the apprehended injury or dispossession. Irreparable injury means the one that cannot be compensated by the way of compensation. The Court must exercise sound judicial discretion while granting or refusing the temporary injunction. The plaintiffs could not prove that in what manner, they may suffer irreparable loss which may not be quantifiable and hence, they could not prove that they may suffer irreparable loss.

This Court does not find any merit in his petition and therefore, the same is hereby rejected and the parties are directed to expedite and co-operate in speedy disposal of the suit.

Put up on 02/03/2026 for forward proceeding.


Civil Judge (Sr. Div.)-I
Piro at Bhojpur