

IN THE COURT OF Civil Judge (Sr. Div.)-I, PIRO, BHOJPUR
Title Suit No. 93 of 2022

Indardeo Tiwari & OthersPlaintiffs

Versus

Priya Tiwari and othersDefendants

Sl. no.	Date of order of proceeding	Order with signature of the Court
1	2	3
04-02-2026	<p style="text-align: center;"><u>ORDER</u></p> <p>Attendance has been filed on behalf of the parties through learned counsels. The instant record has been put up for order today over petition dated 12-07-2023, filed on behalf of plaintiffs under Order 39 Rules 1 & 2 read with Section 151 C.P.C against defendants no. 1, 2 & 3. The defendants no. 1 & 2 have filed their rejoinder dt. 10.05.2024 to the said petition of the plaintiffs against the plaintiff's prayer. Defendant no. 4 has filed his rejoinder dated 13-12-2023 in support of the plaintiffs.</p> <p>It has been prayed on behalf of the plaintiffs to issue injunction against the defendants. It is stated in the petition dated 12-07-2023 that this suit has been filed by the plaintiffs to protect the ancestral and self-acquired property which has been sold by the defendant no. 3 in favor of defendants no. 1 and 2 without partition and it is clear from the genealogical table that defendants are entitled for 1/12 share in the disputed <i>khatiyān</i>. Defendants want to change the physical feature of the property by doing construction work on it. The plaintiffs stated that <i>prima facie</i> cases, and balance of convenience is in their favor and it will be irreparable loss if the defendants are not restrained from changing the physical feature of the suit land and on these grounds, the plaintiffs prayed to grant injunction over the disputed property.</p> <p>The rejoinder has been filed by the defendant no. 4 dated 13-12-2023 in support of the plaintiffs' prayer stating that plaintiffs have filed this suit to declare the sale deed dated 06-04-2022 executed by defendant no. 3 in favor of defendant no. 1 and 2 relating to khata no. 116, khesra no. 627, area- 14 decimal and khata no. 115, khesra no. 628, area 15 decimal as null and void because above mentioned property is not in the share of defendant no. 3. On these grounds, defendant no. 4 prays to grant injunction over the disputed property.</p> <p>The rejoinder has been filed on behalf of defendants no. 1 and 2 on 10.05.2024 with a prayer to reject the petition filed on behalf of plaintiffs on the grounds that the petition dated 12-07-2023 is malafide and not maintainable in the eyes of law. It is further case of the defendants that the suit property is the joint property. It is stated that it is established principle of law that a co-sharer's interest cannot be <i>jeopardized</i> by granting injunction. The parties and their legal representatives have executed several deeds in relation to disputed property and the defendants are not changing the physical feature of the disputed land. The defendant no. 3 has executed deeds only with regard to those lands which he has received out of partition and after getting proper consideration money, the deed has been executed. The possession has already been delivered by the vendor to the defendants and since then, they are in possession over the suit land. Thus, the <i>prima facie</i> and the balance of convenience is not in favor of plaintiffs. On these grounds, the plaintiffs' injunction petition deserves to be dismissed.</p> <p>Heard the arguments put forth by the Id. 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. <i>Prima facie</i> 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-plaintiffs.</p> <p>Prima facie case : <i>Prima facie</i> case is a substantial question raised bona fide which needs investigation and a decision on merits. Satisfaction of court that there is a <i>prima facie</i> 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 <i>prima facie</i> case in his favour, hence balance of convenience is also in his favour. If the defendants are not restrained from changing the physical feature of the disputed</p>	

land, the plaintiffs 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 plaintiffs, restraining the defendants from changing the physical feature of the suit property till the disposal of the suit. It is further submitted that the schedule property belong to plaintiffs and defendants do not have right over the suit land and hence, *prima facie* case and balance of convenience is in favour of plaintiffs.

On the other side the learned counsel of defendants stated in their rejoinder that defendants are in possession of suit land. Hence, there is no *prima facie* case in favour of plaintiff. And thereby no balance of inconvenience to the plaintiff. While determining whether the *prima 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 plaintiffs and parties. Thus, there appears a *prima facie* case in favor of the plaintiffs.

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.

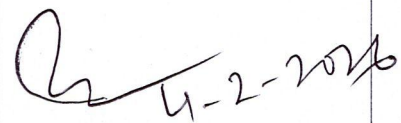
Balance of convenience implies that the comparative troubles or inconveniences which is likely to arise from the issuance of injunction are lesser than the ones arising from withholding the injunction.

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 plaintiffs may not be greater than which is likely to be caused to be present defendants. The plaintiffs have been unsuccessful in proving their possession over disputed land. 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 as the whole petition of the plaintiffs is based on a supposition and assumption as there is no physical status of the disputed land before this Court, therefore, the same is hereby rejected. The parties are directed to get the suit decided at the earliest and will co-operate in speedy disposal of the suit.

Put up on 09.03.26 for further proceeding.



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