

District: Bhojpur

In The Court of Sub-Judge I, Piro.

Title Suit no. -101/2023

Order

20-03-2024: There is attendance of the plaintiff and defendant through their Ld. Counsel. Case is pending for hearing on petition dt.17-06-2023 and its rejoinder dt. 19-10-2023.

On call Ld. Counsel for the plaintiff and defendants appeared. Ld. Counsel for the plaintiff appeared and moved his petition dated 17-06-2023 filled under Order 39 Rule 1 and 2 and section 151 of the C.P.C. Ld. Counsel for the plaintiff submit that the disputed property has been purchased by joint fund of the joint family and there is unity of title and possession on the disputed property. The plaintiff has filled the suit for partition and to separate his 1/3 share. Defendant is doing construction on the disputed property without partition. Prima facie case and balance of convenience is in favour of the plaintiff. The plaintiff will have to suffer irreparable loss.

Ld. Counsel for the defendant opposed the petition and submit that the disputed property has not been purchased by joint fund of the joint family and there is unity of title and possession on the disputed property. This is personal property of defendant no 1 who has purchased the property. There is oral partition between plaintiff and defendant in respect of ancestral property. Prima facie case and balance of convenience is not in favour of the plaintiff. The entire statement of the plaintiff is baseless and fabricated. The plaintiff has filled the petition only who linger the case.

Heard ld. Counsel for both parties and perused the record. After perusal of the same this court finds that the suit is filled for partition and to separate his 1/3 share. The plaintiff pleads for unity of title and jointness of possession on the disputed property. Thus plaintiff admit the fact that defendant have also share in the disputed property. The disputed property is purchased in the name of defendant. It is question of fact that whether it is purchased by joint fund or not. In such circumstances this court does not find prima-facie case and balance of convenience in favour of the plaintiff. Therefore, petition dt. 17-06-2023 filed under Order 39 Rule 1 and 2 and section 151 of the C.P.C. is ordered to be rejected.

Put up on.....for plaintiff's evidence.

**(Aditi Gupta)
Sub Judge I
Civil Court Piro**