

IN THE COURT OF Civil Judge (Sr. Div.)-I, PIRO, BHOJPUF
Title Suit No. 125 of 2024

Rubi Kumari @ Rubi Devi & Ors.Plaintiffs

versus

Suryavansh Pandey & Ors.Defendants

Sl. no.	Date of order of proceeding	Order with signature of the Court
1	2	3
06.08.2026	<u>ORDER</u> Attendance has been filed on behalf of plaintiffs and defendants through their learned counsels. The instant record has been put up for order today over petition dated 20.06.2025, filed on behalf of plaintiffs under Order 39 Rules 1 & 2 read with Section 151 C.P.C against defendants. The defendants have filed their reply dated 25.07.2025 to the said petition of the plaintiffs against the plaintiffs' prayer. It is stated in the petition dated 20.06.2025, that this suit has been filed on behalf of plaintiffs <i>inter alia</i> seeking separate allotment of 1/5th share out of their half share in respect of schedule 1 property of the plaint. It is submitted that despite having knowledge of the case and despite receiving the summons and registered summons, the defendants have deliberately failed to appear before the Court. The defendants are numerous in number and are quarrelsome, cunning, and habitual litigants. They are deliberately acting unlawfully with the intention of exclusively using the valuable disputed joint property for their own benefit. They demolished the joint house in which the plaintiffs had three rooms. While the plaintiff was residing at her matrimonial home, the defendants removed all her belongings, including a <i>chauki</i>, box, many other household articles and took possession of the same. Thereafter, they completely demolished the old house and are contructing at a rapid pace without giving any consideration to the plaintiffs' share. The defendants are continuously attempting, by every possible means, to usurp the plaintiffs' share. Secretly, they are also trying to alter the nature and condition of the disputed property described in Schedule 'ka' situated at <i>mauza</i> Khambha Dihra, Thana no. 31, P.S. Agiaon Bazar, District Bhojpur. During the pendency of the suit, the defendants are trying to sell, transfer, or alienate the disputed property, thereby causing substantial loss and injury to the plaintiffs. The <i>prima facie</i> case and balance of convenience are in favour of plaintiffs, injunction may be granted restraining the defendants from selling, transferring, or alienating the disputed property and from changing its physical feature so that the plaintiffs' rights and interests may be duly protected and if the defendants are not restrained then plaintiffs may suffer irreparable loss. On these grounds they prayed to grant injunction. The reply has been filed on behalf of defendants on 25.07.2025 with a prayer to reject the petition filed on behalf of plaintiffs on the grounds that when the defendants had started construction to repair the old house, situated within the boundaries of the suit property and which had become completely dilapidated and uninhabitable, and was trying to make the same as habitable; thereupon the plaintiffs have filed application under Section 163 of BNSS before S.D.O. Piro seeking injunction. The families of defendant Nos. 1, 2, and 3 have been residing in the aforesaid house for a long time. As has also	
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been stated by the plaintiff in the plaint, under the family arrangement, all the family members have been in separate possession and occupation of their respective shares. Under the said family arrangement, defendant Nos. 1, 2, and 3 were allotted the suit house for their residence, where they have been living with their respective families. However, since the house had become dilapidated, the defendants started reconstructing it. As each defendant had been allotted a separate portion for residence, and the house had become unfit for habitation, the concerned defendants are presently residing elsewhere while undertaking the reconstruction of their old house. The plaintiff has gone to her matrimonial home along with her brother, Kamlesh Kumar. They do not intend to reside here; therefore, the plaintiff is creating obstacles in the construction of the house by the concerned defendants. In this regard, the defendants are ready to allot the share of plaintiff No. 2, Kamlesh Kumar, in another portion at the time of construction, even after the present house is completed. The basic ingredients for issuance of injunction do not exist in favour of plaintiffs and there is no question of suffering irreparable loss by the plaintiffs.

It has been submitted on their behalf that prima facie case and balance of convenience do not exist in favour of plaintiffs and since the defendants are in the possession of the disputed property and the defendants are ready to allot the share of the plaintiff no. 2 in another portion at the time of construction. Therefore, the plaintiffs will not suffer the irreparable loss. On these grounds they prayed to reject the injunction petition with heavy cost.

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 petitioners-plaintiffs.

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**.

This case has been instituted by the plaintiffs *inter alia* seeking separate allotment of 1/5th share out of their half share in respect of schedule 1 property of the plaint. This is a mere partition suit.

While pressing the petition, the learned counsel on behalf of plaintiffs submitted that he has a good prima facie case in his favour, hence balance of convenience is also in their favour. If the defendants are not restrained from selling, transferring, or alienating the disputed property and from changing its physical feature, the plaintiffs will be put to irreparable loss which could not be compensated in terms of money, hence the prayer of the plaintiffs be allowed and the order of injunction be passed in favor of the plaintiffs, restraining the defendants from selling, transferring, or alienating the disputed property and from changing its physical feature till the disposal of the suit and doing any act which is injurious to the plaintiffs. It is further submitted that the *prima facie* case and balance of convenience is in favour of plaintiffs.

On the other side the learned counsel of defendants stated that defendants are also having title over the suit land and are ready to allot the share of plaintiff No. 2, Kamlesh Kumar, in another portion at the time of construction. Hence, there is no *prima facie* case in favour of plaintiffs and thereby no balance of inconvenience to the plaintiffs.

While determining whether the prima facie case is made out, the relevant consideration is whether the evidence led by the plaintiffs. 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 is a prima facie case in favour of the plaintiffs.

Balance of Convenience:- 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 the defendants. The plaintiffs could not show that in what manner he will face inconvenience in case of refusal of injunction petition. The actual possession upon the disputed land cannot be ascertained by this Court at this juncture, though it is clear that the record of right of the disputed land reflects the same as a joint property. Thus, it appears that the balance of convenience does not lie in favour of plaintiffs.

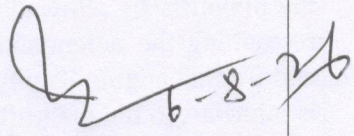
Irreparable Loss :- Here it is the duty of the plaintiffs to prove that he will suffer irreparable loss if injunction is not granted. In the case of *Dalpat Kumar vs. Prahlad Singh*, (1992) 1 SCC 719 Cardinal principle for temporary injunction was considered where the court observed that the party seeking 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 have submitted that the defendants are trying to sell the disputed property. The suit has been instituted in the year 2024 and within these two years; the plaintiffs could not show that either the efforts were made to sell the disputed land, as alleged or actually any deed has been executed so far.

So, from the discussions made above, it is crystal clear that the plaintiffs-petitioners 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 plaintiffs, which can not be compensated.

The plaintiffs could not prove the necessary ingredients required to exist before issuance of injunction. The present injunction petition simply shows the dispute relating to house property and relating to the repair upon the portions of the land. The injunction petition appears to be vague and does not specifically invoke any ground whatsoever for consideration of such petition. The question of alienation appears nothing but assumption by the plaintiff. Hence, considering all these aspects of this case, on the basis of discussions made above, I find & accordingly hold that the petition dated 20.06.2025 filed on behalf of the plaintiffs under Order 39 rules 1 & 2 read with 151 C.P.C. is not having merit. The petition has no force of law. Accordingly, the petition dated 20.06.2025 is hereby rejected.

Put up on ~~10.09.26~~ for further proceeding.


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