

IN THE COURT OF SUBJUDGE-I, PIRO, BHOJPUR

Title Suit No. 182 of 2021

Hasan AnsariPlaintiff

Versus

Hasnain AnsariDefendants

Sl. no.	Date of order of proceeding	Order with signature of the Court
1	2	3
04-12-2024	<p>The instant record has been fixed for order today over petition dated 29-05-2023, filed on behalf of plaintiff under Order 39 Rules 1 & 2 read with Section 151 C.P.C against defendants. The defendant has filed its rejoinder dt. 25-07-2023 to the said petition of the plaintiff.</p> <p>It is stated in the petition dated 29-05-2023 that plaintiff is having unity of possession 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 It is ancestral land of plaintiff ancestors and some suit land are purchased land of the plaintiff and plaintiff is continuing possession peacefully over the suit land since long. The suit land is divided among the sharer in the suit land and plaintiff is in the possession of its share. It is stated by plaintiff that defendant did not have any right of the possession over the suit land and defendant by destroying the nature of suit land by ploughing over the suit land. Further plaintiff pleaded that the defendant disturbing the peaceful possession of plaintiff by illegally ploughing the the suit land. Hence plaintiff prayed for injunction over the suit land. It is further advocated that Defendant, being the powerful person and of criminal lecture forcefully trying to disposes the plaintiff upon which in the defendant does not have right over the suit property and if any document being executed by the defendant which will be totally wrong and baseless and does not have legal sanctity. 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 ploughing work over the suit land and pray to grant injunction over the schedule property.</p> <p>In the contra, the defendant upon show cause filed its rejoinder dt. 25/07/2023 stating that the petition dThe instant record has been fixed for order today over petition dated 29-05-2023, filed on behalf of plaintiff under Order 39 Rules 1 & 2 read with Section 151 C.P.C against defendants. The defendant has filed its rejoinder dt. 25-07-2023 to the said petition of the plaintiff.</p> <p>It is stated in the petition dated 29-05-2023 that plaintiff is having unity of possession 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 It is ancestral land of plaintiff ancestors and some suit land are purchased land of the plaintiff and plaintiff is continuing possession peacefully over the suit land since long. The suit land is divided among the sharer in the suit land and plaintiff is in the possession of its share. It is stated by plaintiff that defendant did not have any right of the possession over the suit land and defendant by destroying the nature of suit land by ploughing over the suit land. Further plaintiff pleaded that the defendant disturbing the peaceful pt. 29-05-2023 of the plaintiff is false, fabricated and based on wrong statement of the plaintiff. It is further stated by defendant that the suit is of the partition and plaintiff is claiming ½ share in the suit land and parties are Muslim and</p>	

as per Muslim law, during the life time of father, the children are not having title over the suit land. It is further submitted that the suit is not maintainable due to reason that this is the partition suit and the plaintiff did not arrayed the necessary party in the suit. It is further submitted by defendant that the plaintiff father already sold out the suit land during his life time to the defendants and defendant are in the possession of the same land. The same fact has been narrated by defendant in its written statement. 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 is absolutely true and the name of defendant also got entered name in the mutation . 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 engaged criminal activity 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 ld. 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 Ld. 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 defendant as claimant in the suit land, and Hence, prima facie case and balance of convenience is favour of plaintiff.

On the other side the ld. Counsel of defendant stated in rejoinder that defendant are in possession of suit land being purchased 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 plaintiff. 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 29-05-2023 filed on behalf of the plaintiffs under Order 39 rule 1 & 2 is not maintainable at this stage. Accordingly, the petition dated 29-05-2023 is hereby rejected.

Put up on for onward proceeding.

(Dictated)

Sub-Judge I
Bhojpur at Ara