

IN THE COURT OF Civil Judge (Sr. Div.)-I, PIRO, BHOJPUR
Title Suit No. 131 of 2018

Sarfaraz Khan

.....Plaintiff

Versus

Sagira Khatoon & others

.....Defendant

Sl. no.	Date of order of proceeding	Order with signature of the Court
1	2	3
07-01-2026	<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 28-01-2022, filed on behalf of plaintiff under Order 39 Rules 1 & 2 read with Section 151 C.P.C against defendants. The defendant has filed his rejoinder dt. 14-09-2022 to the said petition of the plaintiff against the plaintiff's prayer.</p> <p>It is stated in the petition dated 28-01-2022 that the suit has been filed by the plaintiff against defendants to declare the gift deed dated 08.06.2018 mentioned in schedule B land which is executed by defendant no.3 in favor of defendant no.1 and 2 as null and void. The grandfather of the plaintiff Safiullha Khan has made oral <i>hiba</i> in favor of plaintiff on 22.04.2005 and immediately, delivered possession in this respect an agreement was also prepared on 08.06.2005 so as to avoid future complications. Defendant 1st party are having intention to grab the property mentioned in schedule A of the plaint and have encroached upon the property. The plaintiff stated that prima facie case and balance of convenience are in his favor and he may suffer irreparable loss if the defendants are not restrained from alienating the suit land and are not restrained from changing the physical features of the land. On these grounds, the plaintiff prayed to grant injunction over the scheduled A property.</p> <p>The rejoinder which has been filed on behalf of defendant no. 2 on 14.09.2022 with a prayer to reject the petition; filed on behalf of plaintiff on 28.01.2022 on the grounds that the same is not maintainable in the eyes of law. Plaintiff has filed this petition on the basis of false statement with the intention of harassing the defendants. The gift deed dated 08.06.2018; executed by defendant no. 3 is valid document and he has executed this document voluntarily. The said <i>hiba</i> and agreement is forged and not binding of the defendants. There is no construction work done by defendants on the disputed land. Defendant has made a house with his own income on the land. The mutation of this land has been done in the name of defendants. Thus, the prima facie and the balance of convenience are in favor of defendants. On these grounds, the plaintiff's injunction application deserves to be dismissed.</p> <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.</p> <p>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 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 ad interim injunction be passed in favour of the plaintiff, restraining the defendant from</p>	

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 there is no prima facie case in favor 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 by refusing the injunction may not be greater than which is likely to be caused to be greater than present defendant by granting it. Thus, it appears that the balance of convenience does not lie in favour of plaintiff.

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. The injunction petition is pending since 2022, but till date there is nothing on record to believe the story of plaintiff. It appears that the petition is based on mere assumption and nothing else.

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

Put up on ²⁷⁻⁰¹⁻²⁶..... for further proceeding.


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