

IN THE COURT OF Civil Judge (Sr. Div.)-I, PIRO, BHOJPUR
Title Suit No.203 of 2021

Upendar Singh

.....Plaintiff

Versus

Sabita Devi and others

.....Defendants

Sl. no.	Date of order of proceeding	Order with signature of the Court
1	2	3
18-11-2025	<u>ORDER</u> Attendance has been filed on behalf of plaintiff and defendant no. 1, 2, 3 and 5 to 7 through their learned counsels. This Court will decide the petitions relating to issuance of injunction, vacation of injunction order, petition relating to selling of disputed land and other petitions if any by this common order as the issues raised in all these petitions pertain to one and the common question which is largely related to injunction matter. <u>(I) Petition for selling the portions of disputed land on behalf of defendants no. 5, 6 and 7:-</u> A petition has been filed on behalf of defendant no. 5, 6 and 7 under Section 151 C.P.C. on 29.01.2025 with prayer that they be granted permission for selling the property. The copy of this petition has been served upon the plaintiff and other defendants. It has been submitted on behalf of defendants that the injunction petition against defendant no. 1, 2 and 3 was allowed by this Court on 11.11.2022 restraining them to transfer the disputed property, but the said order will not apply against these defendants as they were made parties to the suit after that order. These defendants have purchased the land from one of the co-sharer ie., Dinesh Singh and their purchased land may be adjusted in the share of said defendant. It was further submitted that defendants namely, Anil Singh and Pawan Singh is in need of money for the marriage of their daughters and defendant Anil Singh is also in need of money as his son is undergoing higher studies. On these grounds, they prayed and sought permission for selling the disputed land. A rejoinder to the said petition has been filed on behalf of defendant no. 1 and 3 on 05.05.2025 with prayer to reject the petition on the grounds that the said petition has been filed for creating complication in this suit. Defendant no. 2 has executed several deeds and transferred portion of disputed land and because of which the Court issued injunction. Upon the direction by the Court, both the parties assured on affidavit not to sell the disputed properties during pendency, but defendant no. 2 did not obey the said direction and defendant no. 5, 6 and 7 have acquired the portion of disputed land without the consent of every other co-sharers. Since there is no partition by metes and bounds among the sharers and therefore, it is wrong to say that these defendants have acquired land from defendant no. 2. Just after filing this suit in 2021, knowing fully the status of the case, defendant no. 2 executed sale deed in relation to valuable land. At the instance of defendant no. 1 and 3, the local administration ensure <i>status-quo</i> upon the disputed land. Now, these defendants are misleading the Court. On these grounds, he prayed for to reject this petition. Another rejoinder on behalf of defendant no. 2 has been filed on 22.04.2025 with prayer to accept the prayer of defendant no. 5, 6 and 7. This defendant has	

supported the petition of defendants no. 5 to 7 stating that it is settled law that the order passed in a case is binding only on the parties to the case and thus, the order of injunction is not binding on these defendants.

One other rejoinder to the said petition has been filed on behalf of plaintiff on 22.04.2025 with prayer to reject the petition with heavy cost on the grounds that the defendants no. 5 to 7 are purchasers from defendant no. 2; whose share has not been demarcated so far and they are entitled to claim the portions of land falling in the share of their vendor ie, defendant no. 2. In this case, so long as there is no partition by metes and bounds and specific share of defendant no. 2 is not allotted, the question of claim over any disputed land by these defendants do not arise. These defendants have acquired land during pendency of the suit and their vendor has agreed for not alienation of disputed land. Defendant no. 2, Dinesh Singh has clearly and categorically violated the provisions of Section 3 of Partition Act and Section 44 of Transfer of Properties Act. It was further submitted that when the specific share of def no. 2, the vendor of def no. 5 to 7 is not ascertained, then there is no specific portion upon which these defendants can claim. On these grounds that the plaintiff prays to reject the petition.

(II) Petition for injunction on behalf of plaintiff:-

A petition for issuance of injunction and for restraining the alienation of the disputed land has been filed on behalf of plaintiff on 13-02-2025 . The copy of the same has been served upon the defendants. Defendant no. 5, 6 and 7 has purchased the land from defendant no. 2 bearing khata no. 911, khesra no. 2849 and area 21.875 decimal which is portion of disputed property. This is a case relating to partition and the transfer of the land was done during pendency of the suit therefore, the same be dealt with as per Section 52 of the Transfer of Property Act and the purchasers are entitled to claim partition as per Section 44 of the Transfer of Property Act. But the defendants are forcefully fixed a 6 feet pillar with muscle power leading to irreparable loss to the plaintiff as the defendants have no right of possession without any partition.

The rejoinder to the said petition has been filed on behalf no. 5, 6 and 7 on 21-06-2025 with prayer to reject the petition on the ground that they are purchaser for valuable consideration. The plaintiff and defendant no. 3 have executed deeds in favour of their wives and one Saraswati Devi has also executed deed in favour of her sons but they have not been made parties in the suit. This shows that there is partition among the sharers and they are coming in possession over their portions of land. The necessary elements for issuance of injunction does not exist in favour of plaintiff. On these grounds he prays for rejection of the petition .

One other petition in continuation of petition dated 13-02-2025 has been filed on behalf of plaintiff on 23-05-2025 with prayer to pass order for maintaining status quo during the hearing of injunction petition . It is submitted on behalf of plaintiff that the defendants 5 to 7 have started construction work on the disputed premises since 22-05-2025 and in the interest of justice the status quo order be passed during the hearing and order on injunction petition.

The rejoinder to the said petition has been filed on behalf of defendant no. 5 to 7 on 21-06-2025 with prayer to reject the petition with heavy cost on the ground that there is no material on record to prove that the defendants has started the construction work and the plaintiff has filed the said petition with malice.

The rejoinder to the injunction petition dated 13.02.2025 has also been filed on behalf of defendant no. 2 on 05.05.2025 with prayer to reject the petition on the ground that the same is not maintainable and the injunction petition has already been allowed on 11.11.2022 and therefore, no second petition is maintainable. It is further pleaded that this defendant has executed the deed for want of information regarding institution of this suit. The plaintiff has deliberately not made party to his

wife and wife of defendant no. 3 inspite of the fact that sale deeds have been executed in their favor and therefore, the suit is hit by defect of parties. The necessary ingredients for issuance of injunction do not exist in favor of plaintiff as the plaintiff his self as admitted that the possession of the transferred property lies with the defendant no. 5, 6 and 7. On these grounds, he prays to reject the petition.

(III) Petition under Order 39 Rule 4 C.P.C.:-

The petition under Order 39 Rule 4 of the C.P.C. has been filed on behalf of defendant no. 4 to 8 with a prayer that the petitioners namely, Champa Devi, Raj Kumar Chaurasia, Pavan Kumar, Anil Kumar Singh and Navin Kumar are defendants no. 4,5,6,7 and 8 respectively in the suit. They were not a party to this suit initially. They have been added intervenor defendants in this suit by the order dated 09.10.2022 of this Hon'ble Court for being purchasers of the part of the suit property from the original defendants of the suit. The plaintiff had filed a petition under Order 39 Rule 01 and 02 of the C.P.C. on 10.02.2022 with a prayer for grant of temporary injunction in respect of the suit property restraining the defendants from making any alienation of the suit property. The plaintiff had submitted through his petition that the original defendants had sold part of the suit land and were negotiating to sale rest part of the property which would create further complication of the suit. In course of hearing of the petition for grant of temporary injunction, the plaintiff had filed a sworn affidavit before this Court to the effect and declaration of his intention that he would not sale any part of the suit land. Original defendants of the suit namely, Savita Devi (defendant no.1), Dinesh Singh (Defendant no. 2) and Shailendra Singh (Defendant no. 3) have also filed their separate sworn affidavits to reflect their intention and declaration that they would not sale any part of the suit property to any one till the final disposal of the suit. On the consideration and on the basis of declaration of the plaintiff and defendant no. 1, 2 and 3 that they will not sale the suit property during pendency of the suit, this Hon'ble Court has pleased to pass order dated 11.11.2022 and whereby ordered injunction on the suit property and forbidden them from making sale of any part of the suit property. This Hon'ble Court has further been pleased to directed communication of this order to the Sub-Registrar, Piro for its compliance. The petitioners submitted that they were already impleaded purchaser intervenor defendants in the suit since by order dated 09.10.2022. The petition of the plaintiff on which the temporary injunction order has been passed on 10.02.2022, is prior to the addition of the petitioners as intervenor defendants in the suit. The plaintiff and defendants have not informed this fact to the Court. On the petition of temporary injunction the petitioners have not been heard which could be evident from the order itself. In absence of the petitioners who are intervenor defendants in the suit and who have come on the record only since 09.10.2022, the plaintiff and original defendants in their collusion and defrauded this Hon'ble Court and they were not intending to sale the suit property, got passed the order dated 11.11.2022 granting injunction and prohibition on execution of any sale deed in respect of the suit property. Before passing the order of injunction the petitioners were not heard and the plaintiff and original defendants have grabbed the order of injunction by keeping this Hon'ble court in dark about the actual affairs of the suit and suit property. The petitioners being the purchasers of part of the suit land, they have interest in the suit and in the suit property. Hearing of the petitioners was a necessity of the law and part of natural justice. The plaintiff and original defendants have no longer interest in the suit property. Under the facts of the suit and circumstances presented by the plaintiff and original defendants, this Hon'ble Court would appreciate that their acts are collusive to defraud the Court as well as the petitioners. The law disapproves the collusion and fraud for obtaining a judicial order. The mandate of law is that for grant of equitable relief the party must come before the court of law with clean hands. In the instant case

the plaintiff and primary defendants have not come with clean hands before the court rather they have played fraud with the majesty of law. From the facts and circumstances narrated above it would be clear that the order dated 11.11.2022 by which the injunction on the suit property has been granted has been obtained by the plaintiff and defendants no. 1, 2 and 3 by putting dusts in the eyes of law, the order has been obtained after defrauding of the court of law. They have tarnished the majesty of law by their acts, they have not come before the temple of law with clean hand and they are not entitle for the equitable relief from this Hon'ble Court of law. As the order dated 11.11.2022 has been obtained after keeping the Court of law in dark, the plaintiff and original defendants have committed a fraud with the court, the petitioners were not heard on the petition of injunction, the petitioners have high stake in the suit, the plaintiff and original defendants have no larger stake in the suit, and under such facts the order dated 11.11.2022 is required to be recalled in the end of justice and for upholding the rule of law. Therefore, prayed that this Hon'ble Court would please to recall the order dated 11.11.2022 and pass such other order or orders this Hon'ble Court deem fit and proper in the end of justice.

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. Temporary injunctions are granted in order to preserve the disputed property until the legal rights could be determined. Three conditions apply for the granting of an injunction:-

Prima Facie Case: There must be a clear case on the face of it, supported by evidence, that a prima facie case exists such as to require trial. The Court makes a distinction between "prima facie title" that will demand stronger evidence at trial.

Irreparable Injury: The Court must be convinced that without an injunction, the plaintiff will suffer severe damage that cannot be compensated in terms of money.

Balance of Convenience: The Court measures the hurt caused to each party. Would the grant of an injunction cause greater hurt to the defendant than withholding it would have done to the plaintiff. This is generally what Courts favours as preferring a status quo that seems most just. In the case of Anand Prasad Agarwal v. Tarkeshwar Prasad reported in (2001) 5 SCC 568, it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to

find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which 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 and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (**Dalpat Kumar v. Prahlad Singh** reported in (1992) 1 SCC 719.)

This Court had granted injunction on 11.11.2022. Defendants no. 4 to 8 were brought on record by way of intervenor defendants by order dated 03.08.2023. We know that the basic principle governing any unpartitioned property is that each and every co-sharers thereof owns and would be deemed to be in possession of every square inch of the land. Even when a co-sharer of a joint property is in exclusive possession of the specified portion of the joint holding, he is in possession thereof as a co-sharer and all the other co-sharers continue to be in its constructive possession. It is also fact that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property, a coparcener cannot deprive the other coparceners of their right to the property. A co-sharer cannot alienate the property beyond his share in it. If he sells beyond his share, the selling is void in law. A seller of a property cannot sell any property with better rights than he himself has. In a suit for partition or separation of a share, the prayer is not only for declaration of plaintiff's share in the suit properties, but also division of his share by metes and bounds. In a partition suit, a Court is required to define the shares of the parties, identify the joint properties which are to be partitioned, allocate properties to parties as per their respective shares and put the parties in possession of properties allocated to them.

From perusal of the petition dated 29.01.2025, it is not clear as to what is the boundary or other identification of the land proposed to be sold by the defendants. It has also not been mentioned as to what amount of money is required for the marriage of the daughters of said defendants and the amount of expenses alleged to be done in higher studies of the son of defendants. Neither the expenditure likely to be incurred in these activities, nor the amount of money likely to be available in case of sell of these lands, have been given. The petition appears to be vague and filed with ulterior motive.

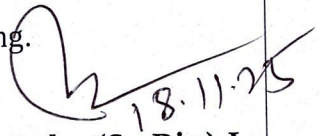
Looking into the principles, for avoiding the multiplicity of cause of action, multiplicity of proceedings, multiplicity of parties, complications in the suit and in the light of above facts and circumstances, it does not appear judicious to permit the defendants to sell the undivided interest in the suit land. Hence, the petition filed on behalf of defendant has no merit and is liable to be dismissed. Thus, the same is hereby rejected for want of any merit.

So far as, petition under Order 39 Rule 4 C.P.C. is concerned, the defendants have not been successful in showing any kind of false and/or misleading statement in the injunction petition filed on behalf of plaintiff, nor it may be stated that the parties were not heard during the hearing of injunction petition on 11.11.2022. None of the criteria for invoking the said provisions appear to attract in the case in hand. Thus, the petition filed under Order 39 Rule 4 has got no substance and is without any merit, the same is hereby rejected.

Needless to say that the plaintiff has got prima facie case and has a certain case which needs to be decided by this Court. It is also a matter of fact that during the pendency, defendant no. 2 has executed deed in relation to disputed portion of the land and the purchasers are now party to this suit. It has been pleaded on behalf of plaintiff that the defendants are trying to change the physical feature of the disputed land.

Needless to say that without partition specific portion of land cannot be transferred to purchaser. Hence, this Court is of the view that the plaintiff may suffer irreparable loss in case of refusal of injunction order. Though, in exact sense the comparative mischief likely to be caused to the plaintiff at this juncture cannot be measured but he may face more inconvenience than the defendants. In view of the elements of the injunction existing in favor of the plaintiff and for the purpose of preservation of suit property, which is utmost duty of this Court, this Court hereby directs, in continuation of its earlier orders, all the parties to this suit to maintain *status-quo* with regard to possession and not to alienate any portions of the suit land till further order, so as to invite multiplicity of the parties and complication in this suit.

Put up on 08.12.2025 for onward proceeding.


18.11.25
Civil Judge (Sr. Div.)-I
Piro at Bhojpur