

IN THE COURT OF Civil Judge (Sr. Div.)-I, PIRO, BHOJPUR

Title Suit No. 253 of 2022

Vakil Rai

.....Plaintiff

Versus

Mukhatar Rai

.....Defendant

Sl. no.	Date of order of proceeding	Order with signature of the Court
1	2	3
12-06-2026	<u>ORDER</u> Attendance has been filed on behalf of the parties through learned counsel. The instant record has been put up for order today over petition dated 23.02.2024, filed on behalf of defendant under Order 39 Rules 1 & 2 read with Section 151 C.P.C. against plaintiff. The plaintiff has filed his rejoinder dated 02.01.2026 to the said petition of the defendant against the defendant's prayer. It is stated in the petition dated 23.02.2024, that this suit has been filed on behalf of plaintiff seeking partition of the disputed land in equal shares 1/2 between the plaintiff and the defendant over the disputed land. It is stated by the defendant that a partition deed dated 10.06.2015 had been executed, on which plaintiff and the defendant had put their signature in the presence of witnesses and the parties are in cultivable possession as per the said partition for last 8 years but in November, 2023, when the defendant was sowing wheat, plaintiff stopped the defendant from sowing wheat on his share of the land mentioned in 'schedule b' of the written statement, stating that a partition suit regarding the disputed land is pending. The prima facie case and balance of convenience are in favour of defendant and injunction may be granted restraining plaintiff from interfering in the cultivation upon the land mentioned in 'schedule kha' of written statement which had fallen in his share. The rejoinder has been filed on behalf of plaintiff on 02.01.2026 with a prayer to reject the petition filed on behalf of defendant on the grounds that the petition dated 23.02.2024 is mala fide and not maintainable in the eyes of law. It is further submitted that the ancestral properties have not been partitioned till date by metes and bounds after proper valuation. The alleged partition deed dated 10.06.2015 is neither valid nor acted upon. That is the reason the plaintiff instituted this suit. The said deed does not reflect the specific land allotted along with boundary. The defendant being the real brother of the plaintiff would have got his signature on the blank paper. Parties are in the possession of land as per their convenience and not on the basis of actual valid partition. Thus the prima facie and balance of convenience is not in favour of the defendant. On these grounds, the defendant's injunction application deserves to be dismissed. Heard the arguments put forth by the ld. counsel of both sides and perused the case record. This suit has been instituted by the plaintiff seeking 1/2 share in	

'schedule 1' land of the plaintiff. It is submitted that there is unity of title and jointness of possession of plaintiff and defendants over the ancestral land. 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/defendant.

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 defendant submitted that has a good *prima facie* case in his favour, hence balance of convenience is also his favour. If the plaintiff is not restrained from obstructing cultivation, the defendant will be put to irreparable loss which could not be compensated in terms of money, hence the prayer of the defendant be allowed and the order of injunction be passed in favour of the defendant and hence, *prima facie* case and balance of convenience is in favour of defendant.

On the other side the learned counsel of plaintiff stated in his rejoinder that there is no *prima facie* case in favour of defendant and thereby no balance of inconvenience to the defendant.

While determining whether the *prima facie* case is made out, the relevant consideration is whether the evidence led by the defendant, 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 parties. Thus, there appears a *prima facie* case in favor of the defendant.

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 defendant may not be greater than which is likely to be caused to the plaintiff. The defendant 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. Thus, it appears that the balance of convenience does not lie in favour of defendant.

Irreparable Loss :- Here in this case, it is the duty of the defendant 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.

It is a partition suit and the defendant could not prove that he will suffer such loss which is not quantifiable.

Even upon minute perusal of the provisions of Order 39 Rule 1 and 2; this Court does not find any of the pre-condition existing in favour of the defendant for issuance of injunction.

In the light of above facts and circumstances of the case, including the provisions of law and established principles of law governing injunction, this is of the considered opinion that the injunction petition filed on behalf of defendant has got no merit and is not having any force of law. The petition is hereby rejected for want of any merit. The parties are directed to get the trial expedite and co-operate in speedy disposal of the suit.

Put up on10.07.26 for further proceeding.


12-6-26
Civil Judge (Sr. Div.)-I
Piro at Bhojpur