

In the Court of Sub-Judge-II, Dumaron (Buxar)

F.D.No. 01/2022

In Matter of Md. Abdullah Ansari Vs Md. Shameem Akhtar & Others

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12.10.2022: The Ld. Advocates for plaintiff and defendants filed attendance on their's behalf. Today the record is fix for the order on the temporary injunction petition filed by the Plaintiff dated 22.09.2022 U/O XXXIX, Rule-1, 2 and Section 151 of the Code of Civil Procedure, 1908. The Ld. Advocate for the plaintiff submitting therein that this Final Decree Suit has been filed as per the decree passed by Ld. ADJ, Buxar in First Appeal No.61 of 1994. After passing of the decree by the First Appellate court, the defendants have not partitioned the suit land, thereafter, this suit for passing final decree has been filed. The defendants no.1 to 5 has been dissatisfied by the decree passed by First Appellate court, they started demolishing at the Plot No.3086, 3091 and 3092, they want to change the physical features of the suit land. They have also collected sands, stones at the way of home of the plaintiff. They have also digged for constructing the pillar in the way leading towards the home of plaintiff. All parties have equal share in the suit land but they wanted to change the physical features of the suit land. There is prima facie case in favour of plaintiff which has been clear from the decree passed by the Ld. Add. District Judge, the balance of convenience also lies in favour of plaintiff and if the injunction is not granted it will cause irreparable loss to the plaintiff which shall not be compensated by any other way. This court has passed an ad-interim injunction vide order dated 08.04.2022 for 180 days which is going to be completed on 07.10.2022, the defendants has already collected the material for construction at the suit land and they have made a plan to construct over the suit land. The report of Advocate commissioner is available on the record. The plaintiff relies on the Order passed by the Hon'ble High Court, Patna in matter of Teka Rai & others Vs Bhagwan Rai & others, 2005(1) BBCJ 444. He further prayed to passed an injunction order on the Plot No.3086, 3091 and 3092 to restrain the defendants to change physical features of the suit land till disposal of this final decree.

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The defendants filed rejoinder on dated 29.09.2022 submitting therein that the petition filed by plaintiff is not maintainable. It is true that plaintiff has filed a partition suit no.73/1985 which has been dismissed on merit, thereafter the plaintiff preferred First Appeal No.61/1994, the defendants preferred Second Appeal No.37 of 2021 before the Hon'ble High Court, Patna against the Judgment and decree passed by the First Appellate Court which is pending. They further submitted that the preliminary decree for partition has been passed in respect of suit plot no.3086, 3091 and 3092, the share of plaintiff shall be carved out only after appointment of Survey Knowing Pleader Commissioner, the claim of plaintiff on entire area of the said plots are prima facie not true. The decree passed in the First Appeal have error and in order to remove the error the mother of applicant and defendants have filed petitions on dated 03.03.2020, 20.02.2021, 04.01.2022 and 05.01.2022, this Suit is prematured before removing the error. As per the decree of First Appellate court the applicant have only 1/35th Share but he wanted injunction on entire suit land. The prima facie case, balance of convenience does not lies in favour of plaintiff. The order of ad-interim injunction passed on dated 08.04.2022 has been challenged in the court of Ld. District Judge, Buxar as Misc. Appeal No.06/2022 which is still pending. The Applicant and others parties have no concern with the plot no.3086, 3091 and 3092, the shop and home of opposite parties are situated on these suit plot. The plaintiff should file injunction petition in the second Appeal No.37 of 2021. He further prayed to reject the petition of plaintiff dated 22.09.2022.

The defendants no.15 has also filed rejoinder on dated 27.09.2022 submitted and supported the application of plaintiff dated 22.09.2022 and prayed to restrain all parties to the suit till disposal of this Suit.

Heard both sides and perused the record, its appear to me that the present status of this suit is on the appearance of rest of the defendants. This suit

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for final decree has been filed after passing Judgement and decree by the Ld. ADJ-V, Buxar in favour of the plaintiff. The defendants being aggrieved by the Judgment/decreed of the Ld. ADJ, Buxar they have preferred a Second Appeal before the Hon'ble High Court, Patna. The plaintiff has sought the relief of an ad-interim injunction against the defendants no.1 to 5. The defendant no.1 to 5 have appeared but they have not disclose any facts regarding pending or passing any ad-interim injunction order by the Hon'ble High Court. A report of Advocate Commissioner is available on the record in which the Advocate Commissioner reported that on the said plots no.3091, 3092 and 3086 there are shops and the newly constructed plinth and saria has been raised for construction of pillar. He has also found about 400 bricks, sands, stone chips over the suit land. This court has also passed ad-interim injunction for 180 days vide order dated 08.04.2022. there are prima facei case, balance of convenience and if the injuction shall not be granted to the plaintiff, he my suffer irreparable loss. Hence, after considering the above facts, circumstances of the case, its becomes necessary to preserve the suit land till final disposal of this suit. Hence, both the parties to the suit are directed to maintain the Status Quo over the entire suit land including plot no.3091, 3092 and 3086, both the parties to the suit are also restrained to change physical features of the suit land by making any new construction till final disposal of this suit. The plaintiff is further directed to take necessary steps for the appearance of rest of the defendants.

Put up on dated **08.12.2022** for the appearance of the rest defendants.

Sub-Judge-II, Dumraon