

IN THE COURT OF SUB JUDGE-I, DUMRAON (BUXAR)

Present: BRIJ KISHOR SINGH, SUB JUDGE-I, DUMRAON

TITLE SUIT - 82/2019

IN THE MATTER OF TAIYAB ANSARI Vs. MD. SUFAIL & OTHERS

Serial No.	Date of order of proceeding	Order with signature of the court	Office action taken with date
1	2	3	4
	08-3-2021	Ld Counsels of both Parties present. After hearing on the petition dated 07-01-2020 of the plaintiff Taiyab Ansari filed under Sec-151 of C.P.C and rejoinder of the defendant no.11 Shaira Bibi dated 07-02-2020, the record has been placed before me for order. <u>ORDER</u> The plaintiffs vide their petitions dated 07-01-2020, under discussion have prayed to restrain the defendant Shaira Bibi from construction work over the suit land bearing plot no.396. It has been submitted by the Id counsel for the plaintiff/petitioner that," the plaintiff has filed this suit...(1)- for the preliminary decree of partition of the plaintiff's 1/6 share in suit land, mentioned in Schedule No-01. The learned counsel for the plaintiff/petitioner has further submitted that, " the defendant Shaira Bibi is constructing house and boring hand pump over the suit land bearing plot no. 396. She is changing the nature of the suit land, which shall cause difficulty in proving the claim of the plaintiff." Further Ld. Counsel for the plaintiff submitted that, prima-facie case exists in favour of the plaintiff. Balance of convenience also lies in favour of the plaintiff. If defendants succeeded in her attempts, this would cause irreparable loss to the plaintiff. Ld counsel for the petitioner prayed for the temporary injunction to restrain the Defendant	

1	2	3	Office action taken with date
			4

Shaira Bibi from changing the nature of the suit.

Learned counsel for Defendant Shaira Bibi vehemently opposed the petition dated 07-01-2020 of the Plaintiff and submitted that, "the petition dated 07-01-2020 filed by Plaintiff, is not at all, maintainable, Plaintiff has no prima facie case. There is no chance of irreparable loss to the Plaintiff, in case of rejection of this petition, even no balance of convenience lies in favour of the plaintiff. Further the learned counsel for the defendant/respondent have submitted that, "both sides are governed by Muslim Law of devolution of properties. The plaintiff has not mentioned the genealogy in the plaint, as such ascertainment of share of each member of the family can not be done. The plaintiff has not mentioned that, in which capacity Shaira Bibi has been made defendant in the present suit. Moreover, the Respondent Shaira Bibi is bonafide purchaser for value and her sale deed dated 18-03-2017 is a registered document which is not impugned under this suit. The respondent Shaira Bibi has been coming under possession of her purchase land vide registered sale deed dated 18-03-2017 and the same has been mutated by state of Bihar and she has been paying rent revenue of the same. In case of plaintiff's success in the suit, there shall be no loss to the plaintiff, because her purchase land is within the share of the vendor. There is no concept of unity of title and jointness of possession in the Muslim Law. Since, respondent Shira Bibi has constructed house, immediately after her purchase and she has been under possession of the same, balance of convenience is clearly in favour of the respondent Shaira Bibi." It has been further submitted that, there is no prima-facie case and balance

Serial No.	Date of order of proceeding	Order with signature of the court	Office action taken with date
1	2	3	4

of convenience is in favor of plaintiff, there is no chance of irreparable loss to the petitioner/plaintiff and the petitions dated 07-01-2020, filed by the plaintiff is fit to be dismissed straightaway.

Heard the learned counsels of plaintiffs, defendants and perused the record. It appears that the present suit has been filed by the plaintiff with prayer (1)- for decree of partition of the plaintiff's 1/6 share in suit land, mentioned in Schedule No-01 For the relief of temporary injunction the existence of [1] prima-facie case [2] balance of convenience and [3] Irreparable loss. are required. For the sake of convenience I am discussing the aforesaid points separately.

[1] Prima-facie Case → This is a suit for decree of partition of the plaintiff's 1/6 share in suit land, mentioned in Schedule No-01. As per plaint, there exists unity of title and jointness of possession in respect of the suit land. As per respondents pleading, there is no genealogy of the plaintiff's family mentioned in the plaint and the plaintiff has not challenged the sale deed in favour of defendant Shaira Bibi. From the perusal of the materials available till now and going through the pleadings of both sides, it appears that the plaintiff has not given the genealogy in the plaint, which is utmost requirement for the computation of share in the joint family properties, since plaintiff and defendants (co-sharers) are guided by Muslim Law, plaintiff ought to have mentioned the details of genealogy with relationship amongst the parties. It is also pertinent that the plaintiff has not raised any grievance against the sale deed executed in favour of respondent Shaira Bibi and also did not

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challenged the same in this suit, hence, as discussed above there appears no prima-facie in the favour of the plaintiff.

[2] & [3] Balance of convenience & Irreparable Loss → As discussed above the plaintiff has not mentioned the genealogy and share of the respondent's vendor and the sale deed executed in favour of Shaira Bibi is also not subject matter of instant suit, as the same has not been made impugned under the suit. On the basis of facts available till now balance of convenience is clearly not in favour of the petitioner/plaintiff and there is no chance of irreparable loss to the plaintiff.

Considering the above discussion, facts and circumstances of the case the petition dated 07-01-2020, filed by Plaintiff Taiyab Ansari, is hereby dismissed. Findings of this order shall have no effect on the final adjudication of this case.


08-03-2021.

BRIJ KISHOR SINGH,
Sub Judge-I, Dumraon