

For the petitioner/OP : Sri Sanjay Kumar Singh, Learned Advocate
 For the Applicant : Sri Gauri Shankar Choudhary, Learned Advocate

SN	Date	Order with Signature	Office Action taken with date
	06/08/2026	1. File presented for order on the OP petition dated 24/02/2026 Under Order 39 Rule 01 and 02 CPC r/w s 151 CPC and rejoinder filed by the applicant . Order 2. Submission on behalf of the OP The Learned Counsel of the OP submitted that 1. The present petition filed to restrain the petitioner to sell schedule I property and maintain status quo on the said property. 2. Schedule-I is joint property left by the common ancestor Ashraf Singh @ Ashrafi Singh and the said Asharfi Singh died leaving behind his two sons namely Udit Narayan Singh and Tej Narayan Singh. 3. The petitioner and opposite parties were heirs of Tejnarayan Singh. 4. Tejnarayan Singh died leaving behind his four sons namely Sadhu Sharan Singh, Sachidanand Singh, Mithlesh Singh, and Baidyanath Singh. 5. Sadhu Sharan Singh died leaving behind his two daughters namely Meena Devi and Punita Devi (Opposite parties). 6. Sachidanand Singh died leaving behind his son Madan Singh (Petitioner) and three daughters namely Ganita Devi, Sunita Devi and Anita Devi, but the daughters were not made parties in the case. 7. Mithilesh Singh and Baidyanath Singh died issueless. 8. Heirs of Udit Narayan were not made party in this case. 9. There was no partition in between heirs of Udit Narayan Singh and of Tej Narayan Singh and no share and patti carved out. Without partition between the heir of Tej Narayan Singh, Mithilesh Singh had no right to execute any WILL. 10. Madan Singh procured forged and fabricated WILL and filed this present probate case and wanted to grab and alienate the share of the opposite parties who lived in their sasural. 11. In the interest of justice it was necessary to restrain the petitioner Madan Singh from not executing any sale deed, maintain status quo on the schedule property and keep shares of the opposite parties safe. 12. The balance of convenience tilted in favour of the opposite parties.	

Continued
06/08/2026

13. If Madan Singh was not restrained then the opposite party would suffer irreparable loss which could not be compensated in terms of money.

14. It was prayed to allow the petition, restrain the petitioner Madan Singh from alienating the share of the opposite parties and keep the property safe.

3. Objection by the Plaintiff

The Learned counsel of the plaintiff objected and submitted that

1. The petition as framed and filed by the OP was not maintainable in the eyes of law as they had no right to file such petition.
2. The petition was filed by the OP with a view to harass the petitioner and linger the case.
3. Mithilesh Singh executed a deed of WILL on 23/06/2017 in favour of the petitioner Madan Singh which he got in an amicable partition and the OP had no right, title, interest and possession of the suit land because it was own property of Mithilesh Singh.
4. No prima facie case or balance of convenience lied in favor of OP, rather it was in favor of this petitioner.
5. OP had no right to say that the WILL was forged.
6. OP father Sadhu Sharan Singh way back on 03/09/1997 executed sale deed in favor of Jeevachh Mandar citing the land as coming in his share after Batwara Bakhudaha.
7. It was prayed to dismiss the petition.

4. The Law

Before dwelling upon the merits of the petition, it would be worth a while to have a look over the relevant provisions of the Law.

1. Order XXXIX of the CPC

Temporary injunctions and interlocutory orders

1. Cases in which temporary injunction may be granted—
Where in any suit it is proved by affidavit or otherwise—
(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other

Continued
06/08/2026

order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach—
 - (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.
 - (2) The Court may be order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.
3. Section 94 of the CPC - Supplemental Proceedings— In order to prevent the ends of justice from being, defeated the Court may,- if it is to prescribed,—
 - (a).....
 - (b).....
 - (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;
 - (d)
 - (e) make such other interlocutory orders as may appear to the Court to be just and convenient.
4. Section 266 of the Indian Succession Act - District Judge's powers as to grant of probate and administration - The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding pending in his Court.
5. Section 268 of the Indian Succession Act - Proceedings of District Judge's Court in relation to probate and administration.-The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided,

Continued
06/08/2026

be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908. (5 of 1908.)

6. Section 269 of the Indian Succession Act - When and how District Judge to interfere for protection of property. (1) Until probate is granted of the will of a deceased person, or an administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he thinks fit, to appoint an officer to take and keep possession of the property

(2) This section shall not apply when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to any part of the property of an Indian Christian who has died intestate.

5. Judicial Pronouncements

1. In the case of Amrendra Dhawaj Singh & Anr Vs Prem Kumar Singh¹, Hon'ble Patna High Court observes that “ It is discernible that a probate Court has the jurisdiction to pass necessary orders for the protection of the subject mater of the testamentary disposition and it cannot be unresponsive to the imminent threat of material change in the existing condition of the property under the will in question.”
2. The Hon'ble Apex Court in the case of Rajnibai (Smt) @ Mannubai vs. Kamla Devi (Smt) and Others² observed as follows: “Merely because there is no dispute as regards the corporeal right to the property, it does not necessarily follow that he is not entitled to avail of the remedy under Order 39, Rule 1 and 2 CPC. Even otherwise also, it is settled law that under Section 151 CPC, the Court has got inherent power to protect the rights of the parties pending the suit.”

6. Finding

1. Conjoint reading of Section 266, 268 and 269 of the Indian Succession Act reveals that the powers of the Court with respect to probate or LA proceedings is the same as in any civil suit or proceeding. Such proceedings will be regulated,

¹ 2013(1) PLJR 853

² (1996) 2 SCC 225

Continued
06/08/2026

so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908. Moreover the Court is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein.

2. Perused the record. The instant case is a Testamentary suit arose out of a Probate case filed by the plaintiff Madan Singh with respect to a WILL executed by Late Mithilesh Singh in his favor and the defendants/OP objected the same. The genuineness of the execution of the WILL is to be tested here.
3. There is no denying the fact that in a contested probate matter the court can take interim measures such as order of injunction to protect the bequeathed property of the testator/testatrix in respect of which the WILL has been executed because to prevent one from alienation is crucial as it avoids creating a third party interest or change in the existence of the bequeathed property. But there must exist real and imminent threat of such alienation. An imaginary and vague allegation of alienation by one party to the other without any substantial basis could not be a valid reason for the Court invoking such extreme powers.
4. Before invoking such powers it must be proved that the property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit. Besides it must be tested on the triplet of Injunction, the Prima Facie case, the balance of convenience and irreparable loss.
5. In the case, the Issues are yet to settled for adjudication. The OP/defendants filed their objection on 18/12/2024. Without going into the merits of the case, it is clear that the defendants allegation of the plaintiff Madan alienating the property in the WILL is mere verbal without any rudimentary proof.
7. In the facts and circumstances mentioned above I do not find any merit in the defence petition dated 24/02/2026 and the same is dismissed accordingly. It is made clear that this order has no bearing on the merits of the case.
8. Fixed 07.09.2026 for further proceedings

Written and corrected by

Neeraj Kumar II
District Judge I
Darbhanga