

In the court of Sub-Judge 1 Benipur
TS 38/2016 Reg 49/16 Indramaya Devi v Jawahar Paswan

24-09-2022 Case record has been placed before me for order after hearing the Ld. Counsels for both the parties upon petition dated 10-08-2017 filed on behalf of plaintiff Indramaya Devi, under O-39 R-1&2 and Sec-151 of CPC.

While pressing his petition, the Learned Counsel for the plaintiff submitted that the land detailed in Schedule 1 of the plaint was auctioned in Rent Execution case no. 1186/1943 and Mouje Lal Jha purchased the said land but the land was purchased in the name of Jai Narayan Jha in auction who was brother in law of auction purchaser Mouje Lal Jha and during the revisional survey operation the revisional survey khatian of schedule 1 land was opened in the name of Mouze Lal Jha. It has been also submitted that CS plot no. 417 having an area of 3 katha 9 dhurs out of schedule 1 land remained of Mouje Lal Jha and RS Khesra no. 3308 having an area of 12 decimals has been carved out from CS plot no. 417 and the same was recorded in the name of Mouje Lal Jha and this land is detailed in Schedule II of the plaint which is subject matter of this suit and Mouje Lal Jha died leaving behind three daughters only so all three daughters entered into oral settlement by which Schedule II land allotted to plaintiff who came in possession over the same and has been utilizing the same peacefully. It has been stated further that with the help of Farik of the father of the plaintiff the defendant constructed an asbestos house and challenged the title of the plaintiff over the suit land.

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The Ld. Counsel further prayed that the prima facie case, balance of convenience is in the favour of plaintiff and irreparable loss may be caused, if injunction be not granted. It has been prayed by the Ld. Counsel on behalf of plaintiff that an order of temporary injunction be passed against the defendant and he must be restrained from making any new construction over the disputed land till the disposal of the suit.

The Ld. Counsel on behalf of defendant opposed this prayer by filing rejoinder to this petition, on dated 14-12-2017. The Ld. Counsel submitted that the defendant in his written statement specifically asserted that he has been and is continuous actual possession over the suit property and plaintiff has admitted the same by praying delivery of possession of the suit land. He further submitted that the defendant has title and possession over the disputed land. The prima facie case, balance of convenience is in the favour of defendant and not in the favour of plaintiff. The defendant will have irreparable loss, if injunction be granted. Hence prayed to reject the petition dated 10-08-2017 filed on behalf of plaintiff.

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 will cause dismissal of the petition for injunction. The burden of proving the same is upon plaintiff.

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1. Prima facie case : In the present case, from perusal of the pleadings of the parties, it transpires that this suit has been filed by the plaintiff for declaration of title of the plaintiff over the suit land and recovery of possession of the suit land in favour of the plaintiff. The plaintiff based her claim over the suit land on the basis of oral settlement between plaintiff and her two sisters done after the death of Mouje Lal Jha, the father of the plaintiff. In her pleading the plaintiff submitted that her father was the real owner of the auctioned property as detailed in schedule 1 of the plaint but the land was purchased in the name of one Jai Narayan Jha Meaning thereby that there are so many facts required to be proved to establish the title of the plaintiff over the suit land. The report of the Advocate commissioner shows the existence of some constructions over the suit land but it is the assertion of the defendant that it belongs to him. It is also worth to note that possession of the defendant over the suit land is admitted fact. Apart from it there are no any cogent and solid evidence/papers which establish clearly a prima facie case in favour of plaintiff. So, at this stage of the suit it does not appear that prima facie case in her favour.

2. Balance of convenience ; It appears from the record that at this stage the plaintiff is not in the possession of the suit property. Rather, the defendant seems to be in the possession of the suit land. The allegation of the plaintiff is that the defendant has constructed an 'Chadra Ghar' in the suit land, whereas the defendant claims that the plaintiff has suppressed the actual fact and there is a

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house of defendant on the suit land. On the basis of the pleadings of both parties it can be said that the suit land is under possession of the defendant. There are no materials placed before the court, which shows that the nature of suit land is going to be changed by the defendant. So the balance of convenience is not seems to be in favour of plaintiff.

3. Irreparable loss : It is evident from the record that plaintiff has pressed this injunction petition very late though filed in the month of August 2017. From discussion made above, while discussing above said ingredients, it is clear that the plaintiff will have no irreparable loss, which can not be compensated in terms of money.

So considering all these aspects of the case I find that the petition of injunction is not maintainable at this stage. Accordingly the petition dated 10-08-2017 filed on behalf of plaintiff stands rejected.

Put up the case record on 23.11.2022 for further proceeding.

Sub-Judge I
Civil court, Benipur