

**IN THE COURT OF CIVIL JUDGE (S.D),
GOGARI, KHAGARIA
PRESENT PRESIDING OFFICER SH. SUMIT KUMAR SINGH
TITLE SUIT NO. 17 OF 2018**

IN THE MATTER OF:

SURESH PANDIT & ORS.

...PLAINTIFFS

VERSUS

JANARDAN PANDIT & ORS.

...DEFENDANTS

ORDER

03.08.2022

Present application dated 06.01.20220 has been filed by the plaintiffs under Order 39 Rule 1 CPC for grant of ad-interim injunction thereby restraining the defendants from alienating any part of the suit land till disposal of the suit or to make any new construction over the suit property.

It is the case of plaintiffs that plaintiffs and defendants are descendants of Leela Pandit who died leaving behind his two sons namely Sito alias Sheetal Kumhar and Jhagru Pandit. Plaintiffs claims themselves to be descendants of Jhagru Pandit and they also claimed the defendant first party are descendants of Sito alias Sheetal Kumhar. It is the case of plaintiffs that the property as mentioned in schedule two of the plaint was recorded in the name of Leila Pandit in the CS Khatiya. After the death of Leela Pandit his descendants succeeded the property and the same came in the hands of plaintiffs and defendants as of today. It is also the case of plaintiffs that after the death of Sito Pandit and Jhagru Pandit there was a family arrangement between the parties as per which

plot number 193 fell in the share of branch of Sito Pandit and Plot number 406 half and half was divided between descendants of Seetha Pandit and Jagroop Pandit.

it is further case of plaintiffs that plot number 406 is the homestead land over which descendants of the recorded tenant are residing with their family members. Plaintiffs have also stated that Sito Pandit and his descendants have already sold or alienate their part of property. Now they are looking for a chance to alienate the property which was in exclusive possession of plaintiffs. Hence, plaintiff had filed present suit for partition.

It was claimed by the plaintiffs that the property is in their exclusive possession, however, during pendency of the suit defendants have started to alienate the property. They are also looking for a chance to alienate rest of the property which is under dispute. Hence, prayer was made to restrain the defendants from alienating any part of the suit property till disposal of the suit. It was also submitted that if the defendant succeeds in transfer of the property then no property would remain at the time of final adjudication of the matter and therefore good prima-facie case exists in favour of the plaintiffs.

Learned counsel for plaintiff had also submitted that there are chances of food being decreed in favour of plaintiffs as there was no previous petition in the family. As such if the defendants are not

restrained from alienating the part of property then it would cause prejudice to the plaintiffs. It was then submitted that if the defendants are restrained from alienating any part of the property then no prejudice would be caused to the defendants as they are not in possession of the property. Hence, prayer was made to restrain the defendants from alienating any part of the suit property.

Reply to the present application has been filed on behalf of defendants. It has been submitted by the defendants that Leela Kumhar died leaving behind only one son namely Sheetal Pandit. Defendants have denied that the Jhagru Pandit was son of Leena Kumhar. They have submitted that after death of Leela Kumhar the entire property was succeeded by Sita and no part of the property ever went in the hand of Jhagu Kumhar. It was also submitted the Jhagru was in permissive possession of the property and he has got no title in the suit property.

It was then submitted that the property was mutated in the name of defendants and the plaintiffs have got no right, title or interest in the property. They have also denied locus of plaintiffs to file the present suit. They have denied the right of plaintiffs in the suit property. Learned counsel for defendants has submitted that once the defendants have denied existence of plaintiffs as their family, under such circumstances plaintiffs are required to prove by

cogent and reliable evidence that they belongs to the family of Leela Kumhar and or else there is no scope for grant of ad-interim injunction.

Heard ld. Counsel for the parties and perused the records. Present suit has been filed by the plaintiffs for partition of the property as mentioned in schedule two of the plaint. The basic contention of plaintiffs is that Leela Kumhar died leaving behind two sons namely Sito and Jhagru. As per defendants Leela Kumar died leaving behind only one son namely Sito. They have denied existence of Jhagru. Plaintiffs claims themselves as descendants of Jhagru Pandit. Defendants have claimed that the plaintiffs are in permissive possession of the property and therefore they have filed a counter-claim in this matter.

Now the subject matter of suit is property which plaintiffs claims to have half share. It is clear that the plaintiffs have based their case on the very fact that Leela Pandit was survived by two sons. Where is defendants have refuted this contention and alleged that Leela Kumhar was survived by only one son. It is apparent from record that this contention raised by parties needs to be adjudicated by this Court. So far is the right of plaintiffs in the suit property is concerned the basic contention has not been proved as of now. Plaintiffs have not produced any material on record to show that Jhagru Kumhar was son of Leela Kumhar. It is yet to be

established by the plaintiffs that they belong to the family of Leela Pandit. At the same time it is clear that the defendants have alienated some part of the property and for rest of the property there in possession. Parties have already litigated before DCLR. The relevant orders are available on record. These orders were challenged by the present plaintiffs in appeal but the same was rejected. The properties as mentioned in schedule two of the plaint have been mutated in the name of defendants. The document shows that the plaintiffs have challenged the mutation order but had failed to succeed. These properties have been called for partition in the present suit by the plaintiffs. To succeed in the suit plaintiffs are required to prove that they are descendants of Leela Pandit. As of now there is no cogent evidence on record to show that Leela Pandit was survived by two sons. The chances of success in the matter is not at all relevant for adjudication of injunction application. The only question before the court is to examine whether the property is likely to be alienated or destroyed by the defendants. As of now all the documents produced by the defendants shows that they are in possession of the property. They have also filed a counter-claim in this matter with respect to the suit land claiming for declaration of their title for entire property. Under such circumstances it is clear that no case is made out by the plaintiffs for grant of ad-interim injunction. According to the

present application is here by dismissed.

Plaintiffs are directed to publish a notice in local newspaper against the non-appearing defendants. List the matter on 16.09.2022 for appearance

Civil Judge (SD)