

IN THE COURT OF SUB JUDGE-I, LAKHISARAI

**T.S. No.- 101/2012
Reg. No.- 1421/2014**

Hari Paswan & others.....Plaintiffs.

Versus

Desh Bikul @ Bikul paswan & others.....Defendants.

Order

22-08-2019

1. Both side filed pairvi. Today, the record is fixed for order on the petition of plaintiff dated 05-04-19 Under Order-39 Rule 1 read with Section 151 of CPC, 1908 and its rejoinder dated 08-05-19 of defendant 2nd party.

2. Learned counsel for the petitioner-plaintiffs submitted that plaintiffs have filed this suit for declaration of their right, title and possession over the suit land in schedule 1 of the plaint. Plaintiffs have also filed suit for recovery of possession of schedule 2 land and for declaration of sale deed dated 20-06-59 and 24-04-92 void abintio. Suit land was recorded in the name of Bakhori Dusadh great grand father of plaintiff. Plaintiffs having right title and possession over suit land since time of a great grand father of plaintiff's. Claim of the plaintiff that Bakhori Dusadh provided accommodation to Fito Dusadh over 7 decimal land of schedule-02. Ajablal Paswan was also provided accommodation by Bakhori Dusadh. Permissive possession over suit land of schedule-02 property was given by ancestor of plaintiff's. Fito Dusadh constructed small mud with house in year 1951 over 7 decimal land and Ajablal Paswan constructed house over 6 decimal land. It is also claim that defendant 2nd party has started to demolish house standing over 6 decimal land of schedule 2 of the plaint on 02.04.19. When the plaintiff objected them defendant 2nd party became violent. Defendant 2nd party has no right to demolish said house which was built by Bakhori Paswan. They are now changing physical feature of schedule-02 land. It will cause irreparable loss to the plaintiff. Defendants are given permissive possession. Plaintiff have good prima-facie case and balance of convenience in favour of plaintiff. Finally, learned counsel for plaintiff's prayed to restrained defendant 2nd party from changing physical feature of suit land given in schedule-02 of the plaint.

3. On the other hand, defendant 2nd party filed their objection. Learned counsel for defendant 2nd party submitted that petition filed is not maintainable either in law or on facts and filed with motive to harass defendants. There is no prima-facie case of plaintiffs. Petition is deserves to be rejected on this score only. Learned counsel for defendant further submitted that it is evident from plaint and injunction petition that defendants are in possession since last 70 years and having bona-fide title. Plaintiff will not suffered irreparable loss in case of refusal of injunction. The defendants having actual, physical, peaceful and continues possession over suit land. No balance of convenience is in favour of plaintiffs rather in favour of defendants. Learned counsel for defendant further submitted that the residential houses of the defendants standing on the suit land are very old in which the defendants are reside in which the family members and the rest portion measuring 37 decimal is kitchen, garden of the defendants and plaintiffs have no concerned. It is matter of fact that physical feature of the residential houses existing on the suit land which belongs to the defendants and are in their possession are still intact and defendants had no intention to demolish the same. The portion of the house belonging to in possession of original defendant No. 5 standing on 6 decimals of land, being old house and its roof began to leak which necessitated to repair the same. In fact twice minor repairing work were previously made but the same did not continued and again after a few years the roof began to leak. Hence sons defendant No. 5 was suggested to replace the old and damaged roof by constructing the R.C.C roof. Thus they demolished only damage portion of the roof to enable them to construct the roof of the same wall without change of physical feature and configuration of the said house. Hence in no case sons of deceased defendant no. 5 can be restrained from doing so otherwise they shall be compelled to live in a house without roof which cannot be permitted by law court by issuing an order of injunction as prayed for by the plaintiffs. The plaintiffs have no authority under the law to put any impediment in the way of defendants in exercise their right hold, possess, use and enjoy the property belonging to them as owners thereof which include right of repairing, reconstruction and re-innovation also. The defendants have privilege to enjoy the property, civil rights and constitutional rights. Irrelevant, inapplicable to the facts and circumstances of the present case. Justice which is desirable to reject the injunction petition dated 05-04-2019 with cost to these defendants because any court of law can not deprive any bona fide owner of the property who is actual physical possession by depriving him from exercising property rights as per his convenience under the garb of injunction petition.

4. Heard both sides. Perused the record. Before granting interim injunction, the court in seisin of the litigation has to address its attention to the existence of or otherwise of three aspects :

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(a) whether a prima facie case is in favour of the petitioner has been established :

In the present case, plaintiffs filed suit for declaration of title and recovery of possession. It is admitted possession that suit land is in possession of defendant. Claim of the plaintiff that defendants are their not original owner but their ancestor gave only permissive possession over the suit land to Ajablal Paswan defendant no. 2 now died represented by legal represented. Defendant no. 2 also filed document regarding suit land and also having possession. Hon'ble apex court in *AIR 1996 SC 1946* hold that person in possession must be protected till disposal of the case. The Court finds that no prima facie case is made out in the present case .

(b) whether the balance of convenience lies in favour of the petitioner :

In the present case, this court finds that plaintiff having no prima facie. Plaintiff has apprehension that physical feature of suit land will change. Report of Pleader Commissioner is available on the record. Report of Pleader Commissioner dated 29-05-19 contained that there was construction work going on. Merely construction work was going on will not sufficient to proof that balance of convenience is favour of plaintiff. Therefore, this court is not inclined to accept argument of learned counsel of petitioner – plaintiff that there is balance of convenience in favour of plaintiff – petitioner.

(c) whether irreparable loss or damage will visit the petitioner in the event injunction relief is declined :

In the present case, this court finds that plaintiff having no prima facie and no balance of convenience in favour of petitioner - plaintiff. Defendants doing renovation work or construction in his house and having sale deed in their favour. Therefore, this court is not inclined to accept argument of learned counsel of petitioner – plaintiff that the plaintiff will suffer irreparable loss or damage after refusal of injunction.

5. In the light of above said discussion, this court holds that three condition for granting temporary injunction is not fulfilled. Accordingly, petition dated 05-04-2019 for temporary injunction of plaintiff Under Order-39 Rule 1,2 read with Section 151 CPC is hereby rejected. Put up on **11 .09.2019** for further proceeding.

Dictated

**Sub-Judge-I,
Lakhisarai**