

IN THE COURT OF SUB JUDGE 1st, LAKHISARAI

T.S-125/2017

Mustari Khatun.....Plaintiff.

Versus

Anwari Khatun & Others.....Defendants.

ORDER

24-01-2020

1. Both side filed pairvi. Today, the record is fixed for order on the petition dated 02-02-2018 filed on behalf of the plaintiff Under Order-39 Rule 1 and 2 of CPC and its rejoinder of the defendant no.1 dated 14-03-19 and rejoinder of the defendant no. 2 and 3 dated 09-01-2019.

2. Learned counsel for the plaintiff - petitioner submitted that the present suit was admitted and the same defendants also appeared in person through Advocate, except one Anwari Khatun defendant no.1. The plaintiff and the defendant are full sisters and in the suit, all are parties. In this suit, advalorem court fee was paid regarding cancellation and setting aside of alleged Kebala and all facts are fully narrated in the plaint. The plaintiff and the defendants are in relation own sisters and they are daughters of Late Md. Ishaque several items of properties lie within the jurisdiction of court, so the genealogy of both the parties, either the plaintiff or the defendant has been appended at the foot of this plaint in schedule-I and the description of the suit land is appended in schedule-II. Md. Ishaque acquitted 8 bighas of land in the name of his wife Nuresha Khatun from personal income. It is fact that the ancestral land is also some jote land and home-stead land lies in village Balgudar of Md. Ishaque was own property, but the present dispute lies for meager portion of total area as suit land which is stated in schedule-II. Md. Ishaque in his life time with the consent of his wife Nuresha Khatun, partitioned the property of an area 8 Bighas as self acquired property in the name of his wife and other property is as own ancestral property homestead land and agricultural land by dividing equal share $\frac{1}{4}$ th to each daughter and all daughters and their family members are serving them (Md. Ishaque and his wife Nuresha Khatun) It is fact that Md. Ishaque had no male issue, except 4 (four) daughters, so Md. Ishaque was very gentle figure and brought correct facts in his mind for division of the property equally by the consent of his wife Nuresha Khatun. Md. Ishaque divided the properties amongst four daughters in equal share $\frac{1}{4}$ th each which was also accepted by the 4 (four) daughters and their family units in the lifetime of Late Md. Ishaque and properties were measured by Amin and all units got equal shares and fixed ALS in its shares – accordingly and further disputes got its end by the father of plaintiff and defendants in his lifetime, so that no future litigation may be prolonged. Nuresha Khatun, mother of plaintiff and defendants never sold even an inch of land in her lifetime because all daughters were living thereon and serving the old aged mother. Anwari Khatun, Aisha Khatun and Yasmeen Khatun were/are sailing in the same boat and they were/are related with bad elements who made a plan for creation of false and fabricated documents and usurped the divided properties of plaintiff Mustari Khatun and for the fulfillment of their grudge, a false document was manufactured on the same day i.e. on 01-07-2011 and that very execution is also concerned with the properties of the property and the said disputed land treated as suit land detailed in schedule-II. The mother of the plaintiff never executed any document as deed, if it has been prepared by defendants are their litigant men, including the plaintiff's properties for prolonging further litigation. Hence, this present suit. The alleged Kebalas dated 01-07-2011 in the name of defendants are forged, fabricated, void, ab-initio and not binding to the plaintiff, so these very documents may be declared null and void and full description of the land as related alleged Kebalas is the suit land, because separate property of the plaintiff is also a subject matter of alleged Kebalas and defendants did not get a single farthing from the mother of defendants and alleged Kebalas were executed when the mother of the plaintiff and defendants was on bed and was serious and in nervous position. The defendants are doll and puppet in the hands of the litigant persons and they are trying to sell their suit lands in the hands of other persons of village for prolonging the litigation and litigant men are

IN THE COURT OF SUB JUDGE 1st, LAKHISARAI

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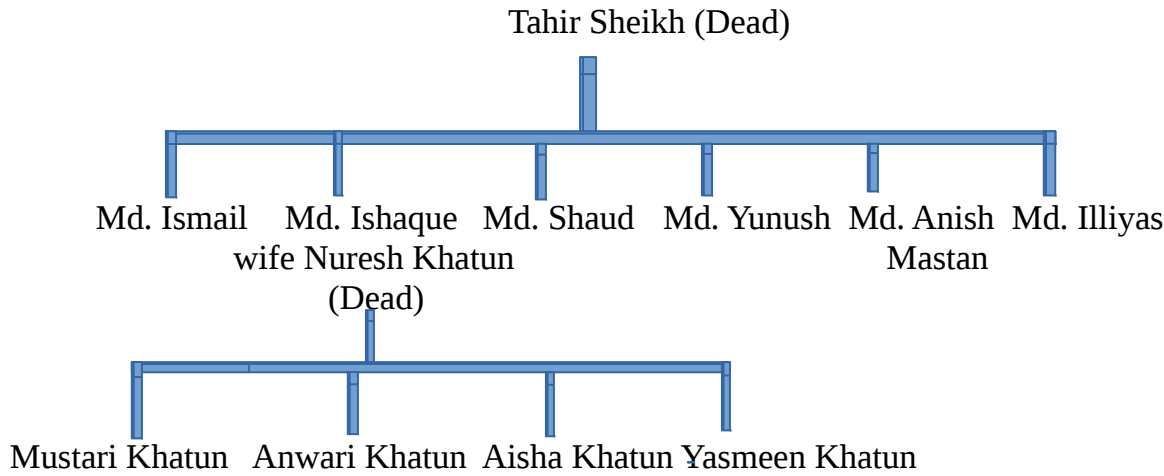
ORDER

Continued....

24-01-2020

also ready to purchase the lands and fate of the suit may be disturbed in future and this fact has also been stated in the plaint in tis para-13. There is serious apprehension of breach of the peace and irreparable loss the plaintiff as well as matter of emergency is over the suit land in future and thus, the plaintiff may be highly disturbed regarding aforesaid properties as bonafide land dispute also.

SCHEDULE-I
GENEALOGY



SCHEDULE-II

(1) Deed No. 2525

Mauza Tauzi No.
Balgudar 4764

Purchaser: Bibi Anwari Khatun

Khata	Khesra	Rakba
55	142	31.05 Decimal

Boundary:

North:- Md. Rashid Khan & Md. Taiyab
South:- Rasta Kachi
East:- Late Bhagwati Yadav
West:

(1) Deed No. 2526

Mauza Tauzi No.
Balgudar 4764

Purchaser: Ayesha Khatun

Khata	Khesra	Rakba
55	142	31.05 Decimal

Boundary:

North:- Md. Rashid Khan & Md. Taiyab
 hall Khariddari
South:- Rasta Kachi
East:- Bibi Anwari Khatun, Aaj Ka
 Kharidar
West: Sheikh Azim

(1) Deed No. 2527

Mauza Tauzi No.
Balgudar 4764

Purchaser: Yasmeen Khatun

Khata	Khesra	Rakba
55	147	31 Decimal

IN THE COURT OF SUB JUDGE 1st, LAKHISARAI

T.S-125/2017

Mustari Khatun.....Plaintiff.

Versus

Anwari Khatun & Others.....Defendants.

ORDER

Continued....

24-01-2020

Boundary:

North:- Rasta Kachi

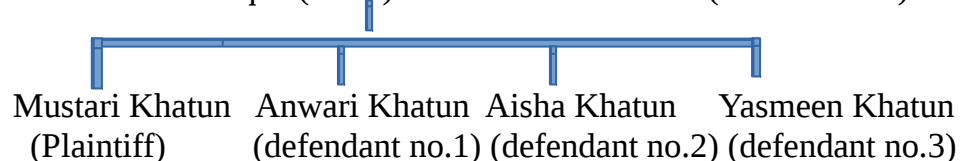
South:- Shahid

East:- Ravindra Prasad

West: Sheikh Azim

SCHEDULE-III

Md. Ishaque (Dead) wife Nuresha Khatun (dead in 2014)



3. On the other hand, learned counsel for defendant no. 1 submitted that petition is not maintainable either in law or an facts. The injunction petition are denied by this defendant no. 1 save and except the facts that are admitted by this defendant no. 1 therein below in this rejoinder petition. It is correct to say that plaintiff and defendants are full sisters and their father namely Md. Isaque @ Md. Ishahak acquired 8 bighas lands in the name of his wife Nuresha Khatun by virtue of registered sale deed and said Md. Isahqe @ Md. Ishahak had no male issue. But it is false to say that said Md. Ishaque @ Md. Ishahak, his wife came in exclusive and peaceful possession of total acquired 8 Bighas lands along with her four daughters in accordance with Hanifi law of inheritance and later on said Nuresha Khatun partitioned her all four daughters namely plaintiff and defendant equally save and except schedule-II lands to the plaint as well as 65¾ Decimal lands of Khesra no. 146 to which had been kept of said Nuresha Khatun for her own livelihood and maintenance. Subsequent to separation, this defendant no. 1 purchased an area of 31.5 Decimal lands of plot no. 142 as detailed in schedule-II (1) to the plaint on 01-07-2011 by virtue of registered sale deed no.- 25LS and came in possession thereon accordingly and got mutation receipt from Anchal Serista, Lakhisarai through Anchal receipt no. 00899043 and Zamabandi no. 105 and this defendant no. 1 acquired absolute and rightful ownership over her aforesaid purchased properties as detailed in schedule-II (1) to the plaint. Hence, there is prima- facie right and title of this defendant no. 1 over her purchased properties and plaintiff has no any right and title over the same. Since, this defendant no. 1 has her good right and title over her aforesaid purchased properties which are also in peaceful possession of this defendant no. 1 so the balance of convenience always lies in favour of this defendant no. 1 in respect of her purchased property and the allegations of plaintiff that defendant are doll and puppet in the hands of litigant persons, are totally false and fabricated statements. It is submitted that there is no chance of sale the suit lands of schedule-II (1) to the plaint as well as the injunction petition by this defendant no. 1 and such false allegation have only been made by plaintiff

4. On the other hand, learned counsel for defendant no. 2 and 3 submitted that the plaintiff petition is not maintainable. The suit land was not purchased land of the husband of Nursha Khatun namely Md. Ishaque but it is self acquired properties of Nuresha Khantun who had purchased the suit land and also others landed properties through registered sale deed and those properties including the suit land was the exclusive properties of Nuresha Khatun the mother of plaintiff and defendants and her husband Md.

T.S-125/2017

Mustari Khatun.....Plaintiff.

Versus

Anwari Khatun & Others.....Defendants.

ORDER

Continued....

24-01-2020

Ishaque had no concern with the suit lands or other. The defendants no. 2 Aisha Khatun purchased the one portion of suit land i.e. 31½ Decimal land of Khata no. 55 plot no. 142 from Nuresha Khatun by paying valuable consideration money Rs. 2,27,000/- through registered sale deed dated 01-07-2011 and since the date of purchase defendant no. 2 is in actual possession with perfect right and title over the said 31½ Decimal of plot no. 142. The name of defendant no. 2 has been mutated in Anchal office of the land of said plot no. 142 on the basis of registered sale deed and actual possession and the defendant no. 2 is paying rent to the Government of Bihar through Zamabandi no. 886 for her purchased suit land. The defendant no. 3 Yasmin Khatun has purchased 31 Decimal land of Khata no. 55 plot no. 147 the portion of suit land by paying valuable consideration money Rs. 2,24,000/- through registered sale deed dated 01-07-2011 from Nuresha Khatun and since then the defendant no. 3 is in actual possession with perfect, title over the same purchased land. Name of defendant no. 3 has been mutated for the said purchased land i.e. the portion of suit land and the defendant no. 3 is paying rent to the Government of Bihar through Zamabandi no. 885. The statements and allegation leveled in the petition dated 02-02-2018 of the plaintiff is false and bogus hence denied. Plaintiff has neither title nor possession over the suit land. It is established principle of law that there is no presumption of jointness of properties in Mohammadan law and there is also no coparcenership in Mohammadan law. The suit land was the exclusive properties of Nuresha Khatun and now at the hands of defendant no. 2 and 3 through purchase and hence the plaintiff has no legal leg to restrain the defendants from using and alienating the suit lands and also no legal leg to demand partition in suit lands. The plaintiff has no good prima-facie case but the case of plaintiff is very weak. Balance of convenience is not in favour of the plaintiff but the same leans in favour of these defendants. The plaintiff will not get any injuries or loss in case refusal of this injunction petition but the defendant no. 2 and 3 well be put in irreparable loss if injunction is granted in favour of the plaintiff. The contests of written-statement of these defendants be treated as part and portion of this show cause. Finally, prayed to dismiss injunction petition.

5. 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 :

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

It is admitted possession that both parties of the suit are Sunni and they are governed by Hanaffi School of Law Let us first consider the Muslim law as given by Tahir Mahmood in Chapter 12 (Law of Inheritance) Para II: II. Muslim Law-Concepts Known and Unknown:

1. "The Muslim law of succession is basically different from the parallel indigenous systems of India. The doctrine of janmswatavada (right by birth), which constitutes the foundation of the Mitakshara law of succession, is wholly unknown to Muslim law. The law of inheritance in Islam is relatively close to the classical Dayabhaga law, though it differs also from that on several fundamental points. The modern Hindu law of succession as laid down in the [Hindu Succession Act](#), 1956 is, however, much different from both the aforesaid classical systems; it has a remarkable proximity, in certain respects, to the Muslim law of inheritance.

2. The division of heritage (daya) into sapratibandh (obstructed) and apratibandh (unobstructed)- self- acquired and ancestral- is equally foreign to Muslim law. Whatever property one inherits (whether from his ancestors or from others) is, at

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Continued....

24-01-2020

Muslim law, one's absolute property-whether that person is a man or a woman.

3. In Muslim law, so long as a person is alive he or she is the absolute owner of his or her property; nobody else (including a son) has any right, whatsoever, in it. It is only when the owner dies- and never before-that the legal rights of the heirs accrue. There is, therefore, no question of a would be- heir dealing in any way with his future right to inherit.

4. The Indian legal concepts of 'joint' or 'undivided' family, 'coparcenary', karta, 'survivorship', and 'partition', etc., have no place in the law of Islam. A father and his son living together do not constitute a 'joint family'; the father is the master of his property; the son (even if a minor) of his, if he has any. The same is the position of brothers or others living together.

5. Unlike the classical Indian law, female sex is no bar to inherit property. No woman is excluded from inheritance only on the basis of sex. Women have, like men, right to inherit property independently, not merely to receive maintenance or hold property 'in lieu of maintenance'. Moreover, every woman who inherits some property is, like a man, its absolute owner; there is no concept of either stridhan or a woman's 'limited estate' reverting to others upon her death.

6. The same scheme of succession applies whether the deceased was male or a female. This is one of those salient features of Muslim law of succession which distinguish it from modern Hindu law of inheritance."

In the present case, the plaintiff filed suit for partition of suit property but the property which was transferred under challenge in this suit to the defendants are in the name of Nuresha Khaoon who herself transferred the property. The plaintiff – petitioner has not filed any paper of partition. The plaintiff – petitioner has only apprehension and not filed any document. Therefore, this court is not inclined to accept submission advanced on behalf of petitioner plaintiff that prima facie case is made out from perusal of document filed on behalf of plaintiff. This court holds that prima facie case of petitioner plaintiff is not made out.

(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. The plaintiff has only apprehension about selling of out of land by the defendants . Sale deed already executed in the favour of the defendants. There is no cogent material on the record in order to substantiate claim of the plaintiff. Therefore, this court is not inclined to accept argument of learned counsel of the petitioner – plaintiff that there is balance of convenience in favour of the 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. There is no imminent danger either to transfer. The right of the plaintiff is well protected under provision Civil law. Therefore, this court is not inclined to accept argument of learned counsel of the petitioner – plaintiff that the plaintiff will suffer irreparable loss or damage after refusal

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O R D E R

Continued....

24-01-2020

of injunction.

6. In the light of above said discussion, this court holds that three condition for granting temporary injunction is not fulfilled. Accordingly, petition dated 02-02-2018 for temporary injunction of plaintiff Under Order-39 Rule 1,2 read with Section 151 CPC is hereby rejected. Put up on **05.02.2020** for further proceeding.

Sub-Judge-I,
Lakhisarai