

IN THE COURT OF A.D.J - III, NAWADA

T.A	$\frac{09/18}{04/18}$	Bibi Sajda Khatoon V/s Md. Yusuf
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15-05-2019 Today the record is put up for order on petition of injunction dt. 07-02-2019 filed on behalf of appellants whereby and where under the appellants have sought injunction restraining the respondents from changing present physical features of suit land by maintaining status quo with respect to suit land.

The copy of petition have been served upon the respondents and respondent no. 1 to 5 have filed their rejoinder on 01.05.2019 and respondent no. 6 to 14 have filed their rejoinder (show cause) on 04.05.2019.

Advocate for appellant as well as respondent no. 1 to 5 have been heard on petition dt. 07.02.2019 (injunction petition) on 06.05.2019. Respondent no 6 to 14. have filed written submission (arguments) on injunction petition on 08.05.2019

Before discussing the merit of injunction petition it is relevant to mention that appellant has nowhere stated in his petition as to under what provision of law the injunction has been sought . But since every civil court is vested with inherent power to grant injunction, this court will examine as to whether the appellants have been able to establish essential facts for grant of injunction in their favour or not.

It is the contention of the appellant that they have filed title appeal no. 09/2018 against the judgement and decree passed by Sub Judge – VII, Nawada in Title Suit No. 169/2005 wherein they were the plaintiffs and Md. Yusuf and Others were the defendants. Further contention is that they are likely to suffer irreparable loss if the defendants/ respondents succeed in changing present physical features of suit land, or transfer the suit land to other persons. Hence, prayed that till disposal of title appeal order of injunction be passed against respondents restraining them not to change the present existing physical features of suit land.

Respondent no. 1 to 5 in their rejoinder dt. 29-04-2019 have contended that the injunction petition is not maintainable and that it mis-conceived and ill advised. The injunction petition is full of ambiguity. In fact the plaint filed before the lower court did not disclose the cause of action. There is no prima facie right in appellant, hence no prima facie case to grant injunction. Lastly, that the petition for injunction lacks merit and hence fit to be rejected.

Respondent no. 6 to 14 in their show cause have supported the contention of the appellant / petitioner.

For grant of temporary injunction the petitioner has to satisfy

- (a) That he has a prime facie case in his favour.
- (b) That he will suffer irreparable loss if the injunction is not granted.
- (c) That balance of convenience lies in his favour.

In plaint the plaintiff have made out a case that ancestors of the plaintiffs and the defendants acquired some land at Post Mortem Road., Nawada and also some land at village Gondapur either through sale deed or through oral settlement accompanied by delivery of possession and by way of Yadast Hukumnama granted in their names by the Ex.landlord and since the aforesaid acquisition the plaintiffs and the defendants ancestors came in possession over the same further before Revisional Survey operation, some dispute arose amongst the family of the plaintiffs and the defendants hence an oral partition was effected between the plaintiffs and the defendants family and on amicable partition the lands of Mohalla Post Mortem Road was exclusively allotted to the husband of the plaintiff and the lands of village Gondapur was exclusively allotted to father of defendants. Plaintiff's husband constructed double storeyed building over half portion of the aforesaid land (Land of Mohalla post Mortem Road) and kept half the portion empty. He gave fencing(boundary wal) 10-12 ft. high. Further case of the plaintiff is that husband of the plaintiff died in the year 1982 and after the death of the husband, the plaintiff inherited and came in possession of the suit land. Plaintiff has further stated that recently the intention of the defendants is not good with respect to the lands of Post Mortem Road with their eagle eyes and with malafide intention the defendants began creating disturbance to the

plaintiff with respect to the suit land and hence this suit has been filed

The case of respondent no 1 to 5 (who were the main contesting defendant before the lower court) was that about 0.19 decimal land of Cadestral Survey plot no. 2999(Land of Post Mortem Road) originally belonged to Abdul Subhan, son of Noor Ali. The aforesaid Abdul Subhan transferred the above land of plot no. 2999 to Md. Nayeemuddin, the husband of the plaintiff and one Jahangir Alam by virtue of registered sale deed dated 22.01.1968 over which the above two purchasers came in joint possession.

The further case of respondents no 1 to 5 defendants is that an amicable partition took place between Md. Nayeemuddin and Jahangir Alam and on the basis of a partition half area of plot no. 2999 towards south was allotted to Md. Nayeemuddin and remaining half area of plot no. 2999 towards north was allotted to Md. Jahangir Alam and they came in separate possession over their respective allotment having no concern from each other. During Revisional Survey proceeding the portion which was allotted to Md. Jahangir Alam was carved out as plot no. 799 where as the southern portion which was allotted to Md. Nayeemuddin was carved out as plot no. 800 "ka" and 800 "kha". The survey authority should have prepared the new khatian separately. The defendants have denied the plaintiffs case that plot no. 2999 was acquired by the ancestors of the plaintiff and the defendants. Rent receipts was not granted in the name of ancestors of the plaintiff and rather it was granted in the names of Md. Nayeemuddin and Md. Jahangir Alam . On the separately allotted portion of plot no. 2999 Md. Nayeemuddin got a puca house constructed over southern portion of plot no. 2999 appertaining to R.S plot no 800 "ka" and 800 "kha" . The portion which was allotted to Md. Jahangir Alam was parti land. It has falsely been alleged that the property of Post Mortem Road was allotted to Md. Nayeemuddin and the land of village Gondapur was allotted to Md. Ishaque father of the defendants. The Property of village Gondapur is the self acquired property of these defendants which was acquired in their names through registered sale deed. The defendants have further stated that some property has also been acquired by the sons of plaintiff at village Gondapur. The defendants have also stated there was no

need of preparation of Khista on 30.04.2002 as alleged by the plaintiff. Such document if any must have been manufactured for purpose of making illegal claim over entire area of plot no. 2999. Such deed was never acted upon and it was never signed by any of the defendants.

Respondent no. 6 to 14 have supported the claim of appellant.

There is on disputed claim of parties over the land in question . During revisional Survey the disputed land has been recorded in the name of defendants. The lower court has dismissed the suit of the plaintiff. The appellants have come in appeal in this court against judgement and decree passed in Title Suit. So at present, from the facts narrated above it can not be said that they have got prima- facie case for grant of injunction.

So far as irreparable loss in concerned, appellants/petitioners have, no where in the entire injunction petition, stated as to in which way the respondent/defendants are trying to change present physical features of suit land, or to whom they are selling the lands. Hence it is held that they could not establish the factum of irreparable loss to them if injunction is not granted in their favour.

Since, appellants could not prove prima-facie case and irreparable loss, it is held that balance of convenience also does not lie in their favour.

In the light of discussion made above the injunction petition dt 07.02.2019 filed on behalf of appellant / petitioner is rejected.

(Dictated)

Addl. Sessions Judge, III

Nawada