

**IN THE COURT OF SUB - JUDGE - IV, PATNA
CITY, PATNA.**

T.P.S No. 392 / 2013.

Registered CIS no. 267 of 2015

Miss Meenu Kumari

Plaintiff.

Versus

Pawan Kumar and Others

.....**Defendants.**

Dated: - 21.05.2019.

ORDER

21.05.2019.

Petition dated 29.01.2015 is filed by the defendant no. 5 and 6 under Order 39 Rule 1 and 2 Read with Section 94 C.P.C. Which is fixed for order today. A rejoinder to said petition is filed by the Defendants on 11.01.2019.

The Plaintiff has filed this present suit for partition of the suit property claiming that the plaintiff and defendant no. 1 to 4 are the legal heirs and descendants of Late Saryug Prasad.

Heard Learned counsel Sri Satyendra Kumar for the Plaintiff/petitioner. He submits that defendant no. 1 to 4 are in collusion with the plaintiff and they have also supported the wrong genealogical table given by the plaintiff in the plaint. He submits that in fact these defendants are the only legal heirs and descendants of Late Saryug Prasad who was owner of the suit property and some of the

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suit property was acquired out of the fund of the Late Saryug Prasad either in the name of defendant no. 1 or in the name of other defendants. Saryug Prasad, S/o Gopi Sao was original resident of Mohalla - Maharajganj, P.S. - Alamganj, District - Patna Saryug Prasad was a businessman who owns a business of brick kiln and was also a grade - I Government Contractor and besides his business he was also a social worker. He remained ward counsellor for period of two terms and was also a Deputy Mayor of Patna Municipal Corporation. Saryug Prasad was married to Radha Devi who was only child of Late Munshi Sao. Out of this wedlock they were blessed with a son named Sanjay Kumar who was born in year 1971 but in the original admission register his date of birth was mentioned 03.11.1975 by Saryug Prasad who is defendant no. 5 in this suit. Saryug Prasad and Radha Devi had no female child, so they decided to adopt a daughter and accordingly adopted a female child from the Missionary of Charity, Padri Ki Haveli, Patna City namely Jaya Kumari who is defendant no. 6 in this suit. Saryug Prasad and Radha Devi brought up Jaya Kumari as their own daughter and got the defendant no. 5 Sanjay Kumar admitted in St. Michael High School, Patna where he studied up to standard II only. Sanjay Kumar received his

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education at his home and did not pursued his education for higher level and as such he is non - metric. Saryug Prasad and Radha Devi got their daughter admitted in Rajkiya Kanya Uchha Vidyalaya, Gulzarbagh, Patna City in Class - VIII unfortunately Radha Devi died in year 1991 leaving behind her husband Saryug Prasad, son Sanjay Kumar and daughter Jaya Kumari as class - I heirs. After death of his wife Saryug Prasad married Jaya Kumari defendant no. 6 with Arjun Prasad Gupta in year 1993. On 19.01.1993 Sanjay Kumar performed love marriage with Nanita Kumari in Bihar Rajya Arya Pratinidhi Mahasabha, Munneshwar Math Bhawan Nagar Zila Patna which cause annoyance to Saryug Prasad and he remained unhappy with Sanjay Kumar for sometimes.

Saryug Prasad was running his business of brick kiln since 1975 on lease. Several female labourers were working there who belong to schedule tribe area of District East Singhbhum and of other tribal belts. The defendant no. 4 Basanti Devi was the labour contractor who used to supply female labourers in brick kiln and in that course, she came in close contact with Saryug Prasad. Basanti Devi defendant no. 4 had illicit relation with many persons and she use to lead adulterous life with her Paramour. Basanti Devi out of greed trapped

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Saryug Prasad and she developed illicit relation with him from the year 1997. Saryug Prasad kept his relation with Basanti Devi concealed from his family. There had been no marriage between Saryug Prasad and Basanti Devi. Basanti Devi became pregnant due to her illicit relation with so many persons and gave birth to female child namely Renu Kumari and after her birth she tried to put pressure upon Saryug Prasad to accept Renu Kumari as his daughter to which he did not agreed then Basanti Devi threatened him that if he will not accept Renu Kumari as his daughter she will file a false case against him and started extracting money from Saryug Prasad. he further states that plaintiff and defendant no. 1 to 3 are issues of Basanti Devi born out of her illicit relations with so many persons and as such the plaintiff and defendant no. 1 to 3 have no concern with the property of Saryug Prasad. Under the undue pressure of Basanti Devi Saryug Prasad sold the property of father of Radh Devi situated at Mohalla - Makhaniya Kuan, P.S. - Pirbahore, District -Patna as well as the property situated at Mohalla - Rajputana Gali, P.S. - Alamganj, District - Patna and out of the sale proceeds of these two properties Saryug Prasad acquired property in the name of defendant no. 4 Basanti Devi and defendant no. 1 Pawan Kumar. He further states

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that defendant no. 1 and 4 have no concern with this property as the same was purchased after selling the property of mother and father of Radha Devi. He further submits that Sayug Prasad also sold the property acquired by his father situated at Mohalla - Mahrajganj, Village - Bela, P.S. - Alamganj, District - Patna and invested the consideration money in acquiring another property in the name of Basanti Devi and Pawan Kumar. Unfortunately, Saryug Prasad died on 21.06.2012 leaving behind him his one son and one daughter (defendant no. 5 and 6). He further submits that plaintiff and defendant no. 4 are in collusion with each other and are negotiating to sell the property in the hands of the strangers and if they will succeed in endeavour it will cost immense lose to the petitioner which will cause multiplicity of litigation. Since the lis is pending in the court for decision therefore it is duty of the court to preserve the suit property till final decision. The petitioner submits that he has strong prima facie case and balance of convenience also lies in their favour and if the plaintiff and defendant no. 1 to 4 are not restrained from selling or changing the physical feature of the suit property it will cause irreparable lose which cannot be compensated in terms of money, hence prays for grant of

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Heard learned counsel Sri Manoj Kumar Gupta for the Defendant no. 1 to 4 who has filed rejoinder cum show cause on 27.11.2018. He submits that defendant no. 5 and 6 are not family members of Late Saryug Prasad and Late Radha Devi rather they are strangers to the family of Saryug Prasad. The defendant no. 5 Sanjay Kumar was servant in the business of Late Saryug Prasad and defendant no. 6 is also not daughter either by birth or adopted as daughter either by Late Saryug Prasad or Late Radha Devi. It is submitted that defendant no. 5 and 6 have not filed any legal document in order to show that defendant no. 5 was son of Late Saryug Prasad and Radha Devi. Not defendant no. 6 filed any legal document as to when she was adopted by Late Saryug Prasad and Late Radha Devi and who was appointed Guardian under order of competent Civil Court with previous permission by court to give the child in adoption. It is submitted that the papers filed by them are forged and fabricated document and manufactured at any time. The said paper has not shown that Late Saryug Prasad or Radha Devi himself or herself admitted in the school. Defendant no. 5 and 6 have not established their claim by legal and cogent documents.

Earlier petition of defendant no. 5 and 6 filed in this suit on 02.04.2014 and in paragraph no. 3 they have stated that " It is respectfully submitted here that deceased Saryug Prasad was married to one Radha Devi and got one son Sanjay Kumar and a daughter Jaya Kumari from wedlock of said Radha Devi. She was the legally marriage wife of Saryug Prasad died on 03.08.1991 after her protracted illness. " These defendants also appended a genealogical table in support of their mentioned case as made out in Para - 3 of their petition in the manner as stated above. The petition dated 02.04.2014 also verified by Jaya Kumari defendant no. 6 and Sanjay Kumar defendant no. 5 on same date. The affidavit in support of their said petition was sworn by defendant no. 5 Sanjay Kumar. In said petition no story of adoption was made rather subsequent thereto defendant no. 5 and 6 manufactured some document in collusion with Sahago Devi the stepmother of Saryug Prasad with whom Saryug Prasad and his family were in inimical term. Defendant no. 5 and 6 projected by said Sahago Devi against Saryug Prasad and his family. The real fact is that the first wife of Saryug Prasad was Smt. Radha Devi and no issue was born either male or female hence on great persuasion and pressure of his first wife said Saryug Prasad got

married with Smt. Basanti Devi defendant no. 4 and Saryug Prasad had two daughters and one son namely plaintiff and defendant no. 1, 3 and 4 said Saryug Prasad made his second wife Basanti Devi as nominee in 1988 with the consent of first wife Radha Devi in life insurance policy. It is further submitted that various property purchased in the name of Basanti Devi out of his own money and her minor son defendant no. 1 Pawan Kumar out of money gifted by Radha Devi. All these papers filed in the suit for kind perusal and consideration. Some of the properties showing in the name of defendant no. 4 and defendant no. 1 are their own properties over which no other has or had any right, title and interest. Those properties are exclusive properties of defendant no. 1 and 4.

Defendant no. 4 has stated in her reply to counter claim filed defendant no. 5 and 6 and in suffice to say that Gopi Sao the father of Late Saryug Prasad got two marriage. First wife was Baso Devi and from wedlock only son Saryug Prasad was born but while he was 2 and half year his mother Baso Devi died and thereafter his father Gopi Sao solemnized second marriage with Sahago Devi and from her wedlock Gopi Sao and three sons Ram Keshwar Prasad, Ramji Prasad and nawal Kishore Prasad

@ Doman Sao. It is submitted that Sahago Devi the stepmother of Late Saryug Prasad on giving birth her aforesaid sons started ill treatment with Saryug Prasad from his childhood. Saryug Prasad was laborious and intelligent so on attaining majority he started his business and developed himself. From his own skills in business and become influential person in the city. From seeing development of Saryug Prasad hi stepmother Sahago Devi and her sons adopted jealous attitude and she started to harass him with anti - behaviour and this chain she projected against Saryug Prasad defendant no. 5 and 6 on false set of facts. There was various litigation in between Saryug Prasad and Sahago Devi and her sons. Sahago Devi was not mother of Late Saryug Prasad rather the stepmother and was in litigation term with Saryug Prasad and she projected defendant no. 5 and 6 only to ruined the family of Late Saryug Prasad. The date of birth as alleged in paragraph no. 4 or elsewhere in the application under reply is for defendant no. 5 and 6 as they were not son and daughter of Late Saryug Prasad. No authentic paper filed so as to prove that Late Saryug Prasad put defendant no. 5 admitted in school or anywhere under his signature by admitting defendant no. 5 as his son. So far adoption of defendant no. 6 is

concerned, it has already been replied and same is reiterated that alleged story of adoption of defendant no. 6 is based upon forged and fabricated papers. Neither Late Saryug Prasad nor Radha Devi adopted defendant no. 6 and the papers as submitted by defendant no. 5 and 6 manufactured forged, fabricated. The procedure for adoption in law must be by a person who have to appointed Guardian by Civil Court and also by disclosing the person who take the child in adoption must took consent from another. Allegation to the contrary made in later part of para - 4 of the application under reply are false and are hereby denied. It has been stated that the papers of Sant Michael School or the paper of Rajkiya Vidyalaya and Missionaries of Charity are all forged and fabricated paper. Saryug Prasad was of social mind and he help the poor persons of the society from which he belong in this chain performing the marriage of defendant no. 6. Allegation to the contrary made in Para - 8 of the application under reply are false and are hereby denied. The story of the marriage of defendant no. 5 as alleged paragraph no. 6 of the application under reply, it is stated that Saryug Prasad and Radha Devi had no concern as defendant no. 5 was or is never son of Saryug Prasad. It has been already stated that

the marriage of defendant no. 4 with Saryug Prasad was legal and valid and plaintiff and defendant no. 1 and 3 are son and daughter of Late Saryug Prasad. Defendant no. 5 was servant of Saryug Prasad in his family and projected by Sahago Devi and her sons against Saryug Prasad and his son and daughter and wife Basanti Devi with dirty allegation. It is false that defendant no. 4 had illicit relation with so many people. The dirty allegation as made in para - 10 of the application under reply or in suit are false hereby denied. The property of makhaniya Kuan and Rajputana village as her assent of the mother of Radha Devi as no one to look after death of her mother as Radha Devi was only issue in her naihara hence Saryug Prasad authorised to manage these properties as per his choice. So far allegation made with regard to acquisition of property in the name of defendant no. 4 and defendant no. 1 are concerned, it has already been stated in forgoing paragraph of this rejoinder and the same is reiterated that the properties acquired in the name of defendant no. 4 by her own money and the property acquired in the name of defendant no. 1 out of money gifted by Radha Devi. The said property is self - acquired property of defendant no. 4 and defendant no. 1.

On the basis of the argument advanced by the parties and the facts and circumstances of this case it is clear that the suit property as described in the plaint is presently under the possession of the plaintiffs as well as defendants for which they are paying rent to the government. While deciding the injunction petition the court has to primarily decide three ingredients (1) prima facie case (2) balance of convenience and (3) irreparable loss. Before enquiry on three ingredients of temporary injunction, I take that the Prima facie case, balance of convenience and irreparable loss are not retrohric phrases for incantation but words of width and elasticity to meet the ends of justice [Dalpat Kumar vrs. Prahlad Singh AIR 1993 SC - 76] I also refer observation of TURNER L J in walker V Jones 1865 LR 1 Pc 50, 61, " the real Point is not how these question ought to be decided at hearing of the cause, but whether the nature and difficulty of the question is such that it was proper that the injunction should be granted until the time for deciding them should arrive; is apt to be kept in named Prima facie case : - Prima facie case does not mean a case to succeed but which fairly needs an enquiry. The need to prima facie case is made out before a cent grants temporary injunction cannot be over

emphasized. Prima facie case should be such that it should be appear on record that there is bona fide contest between the parties and serious question is required to be tried. It is the one which raises substantial question of course bonafide which needs investigation and ultimately a decision on merits. In this case the petitioners have intervened into the matter claiming themselves to be the real legal heirs of late Saryug prasad for which they have filed certain documents before the court these documents are related with the parentage of Saryug Prasad in the name of defendant no. 5 and 6 in this case. Defendant no. 1 to 3 claims these documents to be forged and fabricated by stepmother of Late Saryug Prasad, Sahago Devi who with a lust to grab the property of her step son has fabricated these documents against the interest of plaintiff and defendant no. 1, 2 and 3. The plaintiff in this case has not filed any reply to this petition of the intervening defendants. From the perusal of these documents this court finds that the prima facie case lies in favour of all the parties. But there is a general statement that the opposite parties are adamant to sale the property but no details regarding the sale has been given by him. The petitioner has not stated that he is presently in possession of the property rather he has stated

that he is living separately with his wife. In partition suit all the parties share equal status in the suit. This court is of the opinion that even if the prima facie case lies in favour of the petitioner, the other two condition balance of convenience and irreparable loss does not find ground in favour of the plaintiff.

On the basis of the above discussion I do not find merit in the petition as filed under order 39 Rule 1 and 2 and section 94 and 151 of the C.P.C. and the same stands Rejected.

Put up on _____ for further proceedings.

PRASAD)

JUDGE - IV - CUM

Patna City,

PATNA.

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A.C.J.M.