

**COURT OF SUB-JUDGE, CIVIL COURT, PALIGNJ**

**Title suit Case No.- 04/2022**

Date of Order or Proceeding	Order with the Signature of the Court	Office action taken with dated
26/07/2024	<p>Both parties present. Record has been produced for hearing on petition of the plaintiff dated 04.11.2023, U/O- 39, Rule 1 &amp; 2 read with section 151 of the C.P.C. for injunction. Rajinder of said petition has been filed.</p> <p>Ld. Counsel for the plaintiff has submitted that the plaintiff has filed this suit for declaration that the sale deed dated 09.11.2021 executed by defendant 1st party in favour of the defendant second party is illegal, null and void, unauthorized, inoperative and not binding on the plaintiff and the plaintiff's case in brief is that the plaintiff is owner in possession of 5 kathas land of plot no.- 557, situated at Mauza- Khapura. The plaintiff got this land through deed of gift dated 23.06.1998 executed by her father-in-law. He contended that the plaintiff has narrated the fact that the father-in-law got this land in different paragraphs of the plaint. The land in suit is the Stridhan of the plaintiff and nobody else even her son has right, title and interest in the said land of the plaintiff. He further submitted that the defendant no. 01 the son of the plaintiff without any right, and authority executed a sale deed dated 09.11.2021 in favour of the defendant no. 02 in respect of 3.90626 decimals and of the plaintiff and the said sale deed is illegal and null and void. He further contended that it is relevant to mention here that Deonandan Singh the father of Shanker Deyal Singh got 52 decimals of plot no. 557 along with other lands in partition of the year 1944 from Ganga Pd. Singh and Bindeshwari Pd. Singh. Deonandan Singh died leaving behind his two sons Shri Bhagwan Singh and KOV Shanker Dayal Singh and subsequently there was partition in the year 1987 between Shri Bhagwan Singh and Shanker Dayal Singh and by said partition 26 and 1/2 decimals of plot no.- 557 with other land was allotted to Shankar Dayal Singh and he came in possession over the said land with other lands allotted to him and from the sale deed executed by Manish Kumar Singh it is clearly proved that he was not born in 1987. Hence the question of his non representation in partition does not arise and the plea of defendant no.- 2 is nothing but a myth. Further he submitted that the defendant no. 02 having</p>	

come to know his weakness is in hurry to sell away the suit land to any powerful person to create trouble in possession of the plaintiff and to put obstruction in decree likely to be passed in the suit and the plaintiff has good prima facie case and the balance of convenience also lies in favour of the plaintiff and the plaintiff will be put to irreparable loss and injury in case the defendant no. 2 succeeds in alienating and encumbering the suit land. The loss put to the plaintiff cannot be compensated in money. It is essential in the interest of Justice that the defendant no.- 2 be restrained by an order of interim injunction. So, it has been prayed to pass order of interim injunction restraining the defendant no.- 2 from transferring and encumbering the suit in any manner till disposal of this suit.

Rejoinder of the said petition has been filed by defendant no. 2 and has argued that the allegations in the petition for injunction are totally untrue and the petition for injunction is also not maintainable. He added that this defendant emphatically deny over the disputed land, this defendant has raised any new structure and were going to raise any new Pucca structure for the time being, but this defendant is fully entitled to use the land according to his desire and the basic claim of plaintiff is that she is owner of land bearing Plot No. 557, Khata No. 357. The claim of the plaintiff over the land that she acquired it through gift executed by Shankar Dayal Singh the father-in-law of the plaintiff through registered deed of gift dated 23.06.1998. It is submitted that the Manish Kumar, who is also the coparcener and son of plaintiff and at the time of alleged partition in year 1998 the said defendant aged about 14 years but in said partition he has not represented by anyone father mother so the alleged partition is documents not a legal and valid documents. It is settled principle of law under the Hindu law that in partition all the coparcener must be participated in partition otherwise the said partition become illegal so the gift deed executed by Shankar Dayal Singh not to say illegal documents. As fact stated above then in that situation all coparceners have equal right to deal with the property. It is submitted that the entire area of Survey Plot No. 557 is 26.25 Decimals out of the land only 05 Katha equivalent to 16 decimals land is subject matter of alleged gift deed rest 10.25 decimals land remain joint and out of that the defendant no. 01 only executed sale deed in question with respect to 04 decimal land. The petition filed by plaintiff is not maintainable

and is fit to be rejected. So, it has been prayed that injunction order be kindly dismissed.

**Prima Faccie Case-** Plaintiff has brought this suit for cancellation of sale deed of suit property on basis of gift dated 23.06.1998 executed by her father-in-law whereas defedant no. 2 has also put his title and possession over suit land on basis of sale deed . In suport of statement plaintiff has produced copy of alleged gift deed and defedant has t produced such alleged sale deed challenging validity of deed of gift . Though title of suit property is disputed and alleged sale deed is matter of adjudication at this stage however it prima facie favours the plaintiff in refernce to this petition. . Accordingly prima facie case is made out in favour of plaintiff .

**Balance of convenience-** While considering the question of balance of convenience, the court has to examine comparative hardship of mischief in between parties. In this suit plaintiff and defendants are playing own song of thier respective title and possession over suit property which is yet to be adjudicated . Further any execution may lead to further litigation. These facts show that there is hardship of mischief or injury to plaintiff at this satge . Accordingly Cout is of opinion that, balance of convenience also lie in favour of the plaintiff at this stage.

**Irreparable Loss-** Petitioner has filed this injuction petition under apprehension that defendants is still ademanant for alienation of her stree Dhan property suit which may cause loss to plaintiff .

Considering all these facts court reaches to a definite conclusion that there is sufficient material to show that that property in dispute in a suit is in danger of being alienated by defedant first party to the suit. Since preservation of suit property is prime concern for the court from act of alienation or sale of the property . So in fitness of things, end of justice would meet through restraining the act of alienation or sale of suit property by defedant during proceeding of suit . Accordingly allowing this petition court directes that parties to suit shall maitain status quo of

	<p>suit property in respect of any alienation or sale in relation to any property in dispute in the suit without permission of the court until further orders of court during the suit proceeding.</p> <p>Further plaintiff is directed to cooperate in further proceeding of this suit and speedy conclusion thereof.</p> <p style="text-align: center;">Sub Judge 1 Paliganj</p> <p>.</p>	