

In the Court of Munsif, Paliganj, Patna (Bihar)

Present Raushan Kumar Chhapolia

Title Suit – 28/2019

Md. Mahfuj Alam and others Plaintiffs.

V/s

Hamida Praveen and others Defendants.

ORDER

14.09.2022 Attendance filed for both sides. Matter is fixed for order on injunction petition under Order 39 Rule 1 and 2 of plaintiff dated 25.11.2019. Ld. Advocate for opposite party has filed his show cause dated 24.08.2022.

Ld. Advocate for petitioner/plaintiff vide his aforesaid petition and during oral hearing has submitted that the defendant/opposite party are trying to construct a wall on western and southern side of property mentioned in Schedule-II of the plaint which is admittedly in joint possession. In this respect it has been submitted that the opposite party/defendant have accumulated construction material and prayed for preventing the defendants from doing so. Further submitted and as mentioned in para 7 in petition that the defendant no.-1/ Hamida Praveen approached S. D. O., Paliganj and it is alleged that the police officials are trying to help her in constructing the wall. Finally it has been submitted that the plaintiff is living alone and non granting the relief prayed for will cause irreparable loss to the plaintiff.

Per contra, Ld. Advocate for opposite side/ Principal defendant vide his show cause and during oral hearing has submitted that the petition under reply contains altogether wrong and false facts and further submitted that the plaintiffs did not come with clean hand before this learned Court, in fact, the plaintiffs filed this frivolous suit by suppressing the material facts and also by producing the forged and fabricated documents. Thereafter it has been submitted that the plaintiffs have not seek any relief over

Schedule-II property of the plaintiff but want to sought prayer of injunction over Schedule-II property of the plaintiff which cannot be sustained in eye of law, in fact, the Schedule-II property of the plaintiff cannot deem to be suit property because no any relief sought by the plaintiffs over Schedule-II property of the plaintiff, therefore the petition under reply is liable to be rejected in limine. Finally submitted that the plaintiffs have neither prima facie case, in fact, no any case is made out against the principal defendants nor balance of convenience lie in favour of the plaintiffs and thus, there is no any question of irreparable loss to the plaintiff would arise at all, therefore the statements made in paragraph No.-9 of the petition under reply is hereby vehemently denied and also that the entire allegations and assertions as put forth in the petition under reply from paragraph No.- 1 to end are hereby vehemently denied and the facts of the petition under reply which specifically not admitted by the answering defendant is also deem to be denied in toto.

Heard both side. Perused the entire case record more particularly instant petition dated 25.11.2019, rejoinder dated 24.08.2022. From perusal of above it is found that the disputed property in respect of which the instant petition has been prayed is mentioned as Schedule-II property in the plaintiff. However, no relief specific to this Schedule-II property has been claimed in the plaintiff. Further, it is admitted that the Schedule-II property is in joint possession which is being enjoyed by both the parties.

Law in respect of granting of temporary injunction is well settled as per which the grant of an temporary injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion, the court applies the following tests

1. Whether the plaintiff has a prima facie case;
2. Whether the balance of convenience is in favour of the plaintiff; and

3. Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

This decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the balance of convenience lies.

Further, it is only when a claim is made in the suit which, if established would entitle the plaintiff to relief by way of injunction, that interim relief could be granted by way of temporary injunction, so that a relief in the suit might not be rendered infructuous. Accordingly, if no such relief is claimed, no interim injunction could be granted and duty is cast on petitioners which he has failed to discharge in the instant case. Admittedly no relief in respect of Schedule-II property has been claimed in the plaint but temporary injunction is sought in respect of the same and it is in joint possession. Except for bald allegation of attempt to construct a wall no more ingredient have been established. The court is also fortified in its conclusion in view of the fact that the petitioner is of year 2019 and has been pressed only recently which does not inspire confidence and defies

urgency. Therefore, instant petition is devoid of merit and accordingly is dismissed as rejected.

Matter is fixed evidence of plaintiff evidence on

Dictated

Sd/-

Munsif, Paliganj.

14.09.2022.