

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

Title suit Case No.- 25/2020

Date of Order or Proceeding	Order with the Signature of the Court	Office action taken with dated
23/02/2024	Both parties present. Record has been produced for order on petition of the plaintiff dated 11.04.2023, U/O- XXXIX, Rule 1 & 2 read with section 151 of the C.P.C. and it's show cause filed by the defendant no.- 1, 3, 4, 9 and 10 dated 09.11.2023 & defendant no.- 5 to 8 dated 23.02.2024. The submission of the Ld. Counsel for the plaintiff is that the plaintiffs have filed this suit for declaration of her title over suit detailed in Schedule- B of the plaint. The case of the petitioner in short is that the suit relates to the land of the branch of Bhav Sagar singh. Bhav Sagar Singh had died leaving a son Ramjanam Singh who also died leaving behind four sons, out of them two sons are dead. The plaintiff is the widow of deceased son Somya Kondilya. The defendant 1st Party are the sons and daughter-in-law of deceased son Saurya Kumar. Sri Rajiv Ranjan and his sons are defendant 2nd party and Sri Harischandra Singh and his sons are defendant 3rd party. Further case is that an amicable partition of the joint family property were made between the said four branches for the sake of convenience and by the said partition the land allotted to the branch of plaintiff is given in Schedule B of the plaint and the land allotted to the branch of defendant first and 2nd party are given in Schedule C and the land allotted to defendant 3rd party are given in Schedule E of the plaint. According to the said amicable partition the parties are coming in possession of their respective allotted land. Further case is that the defendants have gone in collusion of each other and they are in look of grabbing the land of the share of the plaintiff with the said dishonest intention they have started negotiating to sell the valuable land of the share of the plaintiff. The defendant 1st set and 3rd set have jointly filed their written statements. In their written statement they have admitted the partition between them but they have given wrong schedule of partition including very inferior quality of land in the share of the plaintiff. As such it is admitted fact that this petitioner has 1/4th share in the joint family properties and is coming in possession of her 1/4th share land	

detailed in Schedule B of the plaint but the defendants with dishonest motive are negotiating to sell the land of the plaintiff and as such in case the defendants are not restrained from alienating and encumbering the suit land during the pendency of this suit this petitioner will be put to irreparable loss. On the other hands the defendants will be put to no loss in case they are restrained during the pendency of this suit. From the fact stated in the plaint as well as in this petition it is evident that this petitioner has got strong prima facie case for grant of injunction. The balance of convenience also lies in favour of maintaining status quo of the suit properties during the pendency of the suit properties. It is, therefore, prayed that your honour be pleased to grant ad-interim injunction restraining the defendants from transferring and encumbering the suit land by any means during the pendecny of this suit.

On the other hand defendant no. 1, 3, 4, 9 & 10 have filed rejoinder have stated that the petition under reply is devoid of merit and is not maintainable either in the eye of law or on the facts and circumstances of case and as such is liable to be dismissed with cost. From reading of plaint itself it is apperant that relief claimed are contradictory to the pleading itself. In para 6 of the plaint it has been pleaded that amicable partition among the four branches took place for the shake of convenience in cultivation only and partition by metes and bounds didn't take place. Therefore plaintiff on the ne hand denies partition and on the other hand claims title over Schedule B on the basis of partition. Therefore claim of plaintiff has been falsified by her pleading itself. Plaintiff is neither co-sharer of the defendants not she can claim ownership over the properties alleged to be allotted in share of her husband Somya Kondinya. Somya Kondinya died leaving behind his wife Damyanti Devi, plaintiff and a son Kondinya Vishwadeepak and a daughter. Therefore plaintiff is entitled to 1/3rd share in the property of her husband as per Hindu Succession Act. She can't claim title over entire property left by her husband. Plaintiff has not file dthe present suit in representative capacity of all the legal heirs of her husband nor she has made them party in the suit, therefore, relief claimed in suit can't be granted to the plaintiffs. The statements made in para 1 & 2 of petition under reply required no comment by answering defendants. The statement made in para 3 of petition under reply is partly false and partly correct. It is true that partition took place among the sons of Ramjanam Singh in year 1993 but

soon after the said family arrangement husband of plaintiff Somya Kondinya refused to comply the terms of partition and started claiming over the lands which were allotted in the share of other co-sharers. Somya Kondinya refused to accept the said partition and filed suit for partition TPS- 93/95 challenging the amicable family arrangement. Somya Kindinya died during pendency of suit in year 2011 therefore husband of plaintiff did not accept amicable family arrangement during his lifetime. The said TPS- 93/95 was dismissed in year 2015 and at the time of dismissal of suit Damyanti Devi and her son Kondinya Vishwadeepak was plaintiff of the said suit and they were also challenging the family partition. But suddenly in the present suit plaintiff has claimed that Schedule B property was allotted in her husband's share in amicable partition. Such claim is mischievous and fraudulent. Therefore there is no prima facie case in favour of plaintiff. The plaintiff has mischievously included some valuable plots allotted to answering defendants in Schedule B. Therefore if the injunction is granted answering defendants would get irreparable loss. The statements and allegations made in para 4 to 6 of the petition under reply are false and concocted. Plaintiff has mentioned wrong schedule of partition in her plaint. Correct schedule of allotment of share has been given in written statement filed by answering defendants. Plaintiff is dealing with properties allotted to the share of her husband she has constructed house over plot no.- 2184 and collecting rent from tenants but is adamant to disturb peaceful enjoyment of share by the defendants. Under the circumstances there is no prima facie case in favour of plaintiff, balance of convenience also doesn't lie in her favour and if injunction is not granted plaintiff would get no irreparable loss. On the contrary if injunction is granted answering defendant would get irreparable loss. It is, therefore, prayed that your honour may graciously be pleased to reject the petition dated 11.04.2023 filed by the plaintiff in the interest of justice.

On the other hand defendant no.- 5 to 8 have filed rejoinder stated that the petition for injunction is not maintainable. The allegations in the petition for injunction are not true. From reading of plaint itself it is apparent that relief claimed are contradictory to the pleading itself. In paragraph no.- 6 of the plaint it has been pleaded that amicable partition among the four branches took place for the shake of convenience in cultivation only and partition by metes and

bounds didnot take place. Therefore plaintiff on the one hand denies partition and on the other hand claims title over Schedule- B on the basis of partition. Therefore claim of plaintiff has been falsified by her pleading itself. Plaintiff is neither co-sharer of the defendants not she can claim ownership over the properties alleged to be allotted in share of her husband Somya Kondinya. Somya Kondinya died leaving behind his wife Damyanti Devi, plaintiff and a son Kondiya Vishwadeepak and a daughter. Therefore plaintiff is entitled to 1/3rd share in the property of her husband as per Hindu Succession Act. She can't claim title over entire property left by her husband. Plaintiff has not filed the present suit in representative capacity of all the legal heirs of her husband nor she has made them party in the suit, therefore, relief claim in suit can't be granted to the plaintiffs. The statement made in paragraph no.- 1 & 2 of petition under reply require no comment by answering defendants. The statement made in paragraph no.- 3 of petition under reply is partly false and partly correct. It is true that partition took place among the sons of Ramjanam Singh in year 1993 but soon after the said family arrangement husband of plaintiff Somya Kondinya refused to comply the terms of partition and started claiming over the lands which were allotted in the share of other co-sharers. Under the circumstances there is no prima facie case in favour of plaintiff, balance of convenience also doesn't lie in her favour and if injunction is not granted plaintiff would get no irreparable loss. On the contrary if injunction is granted answering defendant would get irreparable loss. It is, therefore, prayed that your honour may graciously be pleased to reject the petition dated 11.04.2023 filed by the plaintiff in the interest of justice.

Heard both parties and perused the materials on record. The satisfaction of triple tests is condition precedent for the purposes of granting injunction. Accordingly

Prima Facie Case- Plaintiff has brought this suit for declaration of title and confirmation of possession in suit property against defendants on basis of amicable partition which had taken place between plaintiff and defendants in year 1993 whereas defendants have denied the said partition and argued that plaintiff Damyanti Devi is wife of Somya kondinya who soon after the said family arrangement of year 1993 refused to comply the terms of partition and started claiming over the lands which were allotted in the share of other co-sharers and filed suit for partition TPS- 93/95 challenging the amicable family arrangement. Somya

Kindinya died during pendency of suit in year 2011 therefore husband of plaintiff did not accept amicable family arrangement during his lifetime. The said TPS- 93/95 was dismissed in year 2015 and at the time of dismissal of suit Damyanti Devi and her son Kondinya Vishwadeepak was plaintiff of the said suit and they were also challenging the family partition. The title and possession of suit property is disputed and alleged partition is matter of adjudication at this stage. Considering all these facts court finds that no prima facie case is made out in favour of plaintiff alone at this stage.

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 . Plaintiff has admitted in para 06 plaint that No partition had taken place by metes and bounds. Further plaintiff argued that that defendant first party are planning for execution of property in question . Further there is nothing to show preparation of execution of any deed in respect to suit land . These facts show that there is not any hardship of mischief or injury to plaintiff at this stage. Hence the balance of convenience is also not favourable only to plaintiff at this stage.

Irreparable Loss- Petitioner has filed this injunction petition under apprehension that defendants first party is still adamant for alienation of property of the suit which may cause loss to plaintiff. It is well admitted that the defendants first party are cosharer of suit properties. All the parties in this suit are saying that they are in actual possession of their respective suit lands. There is nothing on record to show that defendants are planning to execute deed in respect to suit land. Hence mere omnibus allegation do not put forward a sufficient cause to reach for a conclusion that any irreparable loss would be caused to the plaintiff. Considering all this court reaches to a definite conclusion that the plaintiff has no prima facie case as title of plaintiff over suit plots is matter of adjudication . The balance of convenience also not favourable as all the parties are playing their own song of possession over the suit land and irreparable loss is not considerable as the plaintiff has put an omnibus allegation of alienation of suit properties by the defendants. Accordingly the petition for injunction has no merit hence rejected .

By the order of- .

[Ravi Pandey]


Sub-Judge-I