

**COURT OF SUB-JUDGE-I, CIVIL COURT, PALIGNJ**  
**Title suit Case No.- 34/2020**  
**Sanjeeda Khatoon & Others Vs. Soiba Khatoon & Others**

Date of Order or Proceeding	Order with the Signature of the Court	Office action taken with dated
13/08/2024	<p>Plaintiff and defendant no. 1-9 alongwith defendants no. 11 to 13 are present in the court alongwith their learned counsel. Record has been produced for order on petition of the plaintiffs no.- 1 &amp; 2 dated 08.01.2024, U/O- XXXIX, Rule 1 &amp; 2 of the C.P.C. for injunction. Rejoinder of said petition has been filed by defendants no. 1 to 9.</p> <p>The learned counsel for the plaintiff has submitted that the plaintiffs have file this suit for a preliminary decree of partition with respect to her share in Schedule - 2 property of the plaint along with other ancillary reliefs including relief of ad-interim injunction for restraining the defendants from alienating or encumbering and changing the physical feature of the suit property and the plaintiffs have taken all the steps for service of notices to the defendants and even the notices for appearance of the defendants have been published in daily Newspaper by order of this learned court. The defendant No.11 &amp; 13 appeared on 08.06.2022 and out of them the defendant No.11 has filed written statement on 08.11.2023 and subsequently defendant No.13 has been debarred from filing written ht statement vide order dated 14.11 2022. He submitted that defendant No.4 &amp; 5 appeared on 14.11.2022 through their learned counsel. Further the defendant No.1, 2, 3, 6, 7, 8 and 9 appeared on 27.04.2023 through same set of the learned counsels who appeared defendant No.4 &amp; 5. The present suit has been proceeded ex-party against the defendant No. 1 to 10 vide order dated 31.08.2022 and defendant No. 11 to 13 has been debarred from filing written statement vide order dated 14.11.2022. He further submitted that the plaintiffs' case in short is that the plaintiffs and defendants belong to the same family and they are descendants of one Ismail Miya who was the recorded tenant of khata No.12 &amp; 13 under thana No.361 in the cadastral survey Khatiyani. The further case of the plaintiff in short is that Ismail Miya died leaving behind his only son, Abdulla Malick @ Malick Abdulla who inherited the Schedule 1 property of the plaint after demise of his father. Malick Abdulla died leaving behind his only son, Abban Malick and two daughters Hasbun Nisha and Sanjeeda Khatoon (plaintiff No.1). He added that Malick Abdulla died leaving behind Schedule 2 property as his heritable estate over which the son and daughters of deceased Malick Abdulla being the sharers came in joint</p>	

possession as tenants in common over Schedule 2 property of the plaint in which said Abban Malick has two shares, Hasbun Nisha has one share and Sanjeeda Khatoon has one share and there was no any division or partition ever took place among the son and daughters of deceased Malick Abdulla. Abban Malick without any partition with his sisters died leaving behind his wife, Soiba Khatoon (defendant No.1), four sons namely Sonu, Hero, Firoz and Sikendar (defendant No.2 to 5) and also four daughters namely Sufi Khatoon, Rumi Khatoon, Shano Khatoon and Mano Khatoon (defendant No.6 to 9) who are being heirs of deceased Abban Malick intitled to get their respective share in the heritable estate of deceased Abban Malick The eldest daughter of deceased Malick Abdulla, namely Hasbun Nisha died leaving behind her only son, Md. Ashlam (defendant No.10) and four daughters namely Tahra (defendant No.11), Shahada (she died issueless), Bunan (defendant No.12) and Ruhi (defendant No.13) who being heirs of deceased Hasbun Nisha are entitled to get share in Schedule 2 property of the plaint and when the defendant 1st party refused to divide the Schedule 2 property of the plaint amicably then the plaintiffs file the instant suit for partition. The deceased Abban Malick had sold out some items of Schedule 2 property of the plaint in his lifetime and after his demise his heirs also sold out various properties out of Schedule 2 property of the plaint without being any partition and these facts had never been disclosed by them to the plaintiffs rather the plaintiffs got knowledge about the same through the website Bhumijankari.com and also when the plaintiffs obtained come certified copy of the sale deeds on 09.12.2020. The properties which have been sold by them are detailed in Schedule 3 of the plaint and the plaintiffs prayed to adjust the Schedule 3 property of the plaint in the share of defendant 1st party. However, it makes it clear that the entire documents relating to Schedule 2 property are in possession of defendant 1st party and there is likely chance that the defendant 1st party and their ancestor Abban Malick has sold out more property then the Schedule 3 property of the plaint and the defendant 1st party can only able to put the real facts before this learned court as to how much properties out of Schedule 2 property of the plaint have been sold by them. He further added that the Schedule 3 property of the plaint are most valuable pieces of lands which have been sold by the aforesaid Abban Malick and heirs without any division of partition with plaintiff and other defendants. The defendant 1st party is well aware about the pendency of the present suit, in fact, they have already appeared in this suit, but in spite of filing written statement they are regularly dealing with the Schedule 2 property of the plaint and they are adamant to sell the entire suit property, even the defendant No.1 has created several sale deeds on

09.03.2022, bearing deed No.2722, 2723, 2724 and 2725, with respect to plot No.782 under Khata No.13 which is part and parcel of Schedule property of the plaintiff. 2. The defendant No.1 also created some sale deeds on 26.12.2022 with respect to plot No.782 under khata No.13 bearing deeds No.15043, 15044, 15045 and 15046, which are also part and parcel of Schedule 2 property of the plaintiff. It is respectfully submitted here that the defendant 1st party are in hurry to dispose-off the Schedule 2 property of the plaintiff and they have no respect about the proceeding (pendency of this suit) before this learned court. It is settled principle of law that once lis has been admitted the property should be preserved by order of Status-quo and it is also settled law that if a lis has been admitted for adjudication, then it becomes the duty of the court to preserve the subject matter of litigation by an appropriate order so that the same is available at the time of final adjudication and the decree does not become a barren one. The plaintiffs crave leave to this learned court to refer the averments of the plaintiff at the time of hearing of this petition. The plaintiffs have strong prima facie case, balance of convenience also lies in favour of the plaintiff and if the defendant 1st party be not restrained from alienating or encumbering the Schedule 2 property of the plaintiff it would be cause irreparable loss to the plaintiff. It is therefore prayed to restrain the defendant 1st alienating or party from encumbering the Schedule 2 property of the plaintiff and also direct them to maintain status-quo till disposal of the suit and/or pass such order or orders as this court may deem it fit and proper.

Per contra though rejoinder of the said petition has been filed by defendants no. 1 to 9 against the injunction petition dated 08.01.2024 of plaintiff but this suit is proceeded ex-parte against defendant no. 1-9 by order dated 31.08.2022 passed by this court and despite of observation of the court that without recalling the order dated 31.08.2022 by defendants, the defendants have no locus to stand in this suit to oppose the plaintiff or this petition, the defendants have not taken any step towards recalling of the order dated 31.08.2022. Accordingly the show-cause filed by the defendants shall not be read as the protest of the injunction petition.

Having heard the plaintiff and perusal of the record and petition, court finds that the present suit has been filed for the partition of the suit property as per the share of the parties and the said petition was filed to prevent the defendants from alienating documents in respect of the suit property. Further it is clear from perusal of the petition and records that several deeds have been executed by defendants which might lead to further litigation.

	<p>The case is still running ex-parte against the defendants no 1 to 9 despite of their appearance in the suit on 27.04.2023 and no reason has been explained by defendants in open court for not recalling the ex-parte order dated 31.08.2022 passed against them. It is well settled law that if a lis has been admitted for adjudication, then it becomes the duty of the Court to preserve the subject matter of the litigation by an appropriate order so that the same is available at the time of final adjudication and the decree does not become a barren one.</p> <p>In this case the facts and arguments of defendants no. 1 to 9 are still unheard as the case is running ex-parte against the defendants no. 1 to 9. Considering above circumstances of both sides and for the preservation of the suit property, this court, with out hearing the petition on merit ,orders that preservation of suit property is prime concern for the court from any act /omission against the law . So in fitness of things and for end of justice , the parties are directed not to indulge in any act / omission, against the law with respect to suit property. In case of exigency leave of the court may be sought post proper intimation to adversary.</p> <p style="text-align: right;">(Ravi Pandey)</p> <p style="text-align: right;">Sub-Judge-I Paliganj</p>	