

Court of Civil Judge (Junior Division), Banmankhi, Purnea

T. S No.- 14 / 2021

Krishnadeo Yadav & Others ----- Plaintiffs

Versus

Krit Narayan Yadav & Others ----- Defendants

CD No-101
Order-02.4.24

07-03-2025 Attendance has been filed on behalf of plaintiffs and defendants no. 02 to 10. Plaintiffs has instituted the present suit against the defendants for $\frac{1}{2}$ share over their ancestral khatiyani land. Plaintiff has filed petition under **Order 39 rule 1 and 2 CPC dated 15-02-2024** with the prayer to grant interim injunction restraining the defendants from changing the physical feature of suit land by way of construction of many phus chhatti (Teena) over the suit land during the pendency of suit till the disposal of the suit.

Heard the learned counsel for the parties and perused the record.

As has been stated in the plaint, interim injunction petition and the accompanying affidavit, That the plaintiffs have in possession over their $\frac{1}{2}$ (half) share $37\frac{1}{2}$ (Thirty seven and half) dec. From 31 decimals, plot no. 4603 & 44 and 44 dec. Plot no. 4604 under khata no. 231 in the southern side as per genealogical table. That the defendant sold the share land of plaintiffs amongst their family members and want to disturb the possession of plaintiffs. That Defendant constructed phus (Teena) chhatti over the suit land in the night on 26.01.2024. The plaintiffs went to the Jankinagar P.S. and filed a petition for save them and the Jankinagar P.S. after enquiry started a case no. 73P/24 u/s 107 Cr. P.C. against the defendant. That if the defendant succeeded to making the house could change the physical feature of suit land then plaintiff would suffer irreparable loss and injury which cannot be compensated at any cost. That the plaintiffs have got very good prima facie case since plaintiff claimed the suit land by way of khatiyani from then the ancestral share land of plaintiffs therefore the balance of convenience heavily lies in favour of plaintiff. The plaintiff by means of his injunction petition has prayed for issuing interim injunction restraining the defendants from changing the physical feature of suit land by way of construction of many phus chhatti (Teena) over the suit land during the pendency of suit till the disposal of the suit.

The defendants no. 2 to 10 have contradicted the aforesaid statements of the plaintiff and have opposed the injunction application by filing their rejoinder dated 16-05-2024. The stand taken by the defendants no. 2 to 10 is that petition under Order 39 rule 1 and 2 CPC dated 15-02-2024 filed by the plaintiff is not maintainable either in law or on fact. The defendants no. 2 to 10 has further stated that from the pleading of plaintiff it is obvious that plaintiff has got no prima facie case in their favour. That defendant no. 2 to 10 are heirs of Lakhan Mandal and Jagdeo Mandal sold the suit land of Mouza-Chandpur Bhanga Thana No- 351, Khata No-231 with 17 (Seventeen) plot of Khatiyani area within the share of Lakhan Mandal and Jagdeo Mandal. That these defendant could not construct any phoos and tina chatti house over the suit land as all construction work of pakka house was done before 05 to 10 year ago by the purchaser of suit land all purchaser and heirs of khatiyani raiyat are in peaceful possession over the suit land. That all above fact stated in written statement and rejoinder petition clearly proved that plaintiff has got no prima facie case and suffers no any irreparable loss. That plaintiffs has no balance of convenience in their favour so question of granting Injunction does

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not arise. Thus the defendants no. 2 to 10 has prayed that the court be pleased to dismiss the above mentioned interim injunction petition dated 15-02-2024, filed by the plaintiff, for the ends of justice.

As is evident from the aforesaid stands of the parties, the plaintiffs claims their $\frac{1}{2}$ of the share in the disputed suit land. It is to be clarified here that at the stage of disposal of an interim injunction petition, question of right or title in the disputed land cannot be gone into by the court nor the same is relevant for purposes of disposal of the injunction petition in as much as the rival claims as to right and title of the parties in the disputed land can only be decided at the trial and not at the stage of disposal of the interim injunction petition. An interim injunction petition has to be decided on the basis of possession of the parties over the disputed land. Both the parties to the suit claims title over the property, hence there is a bonafide question required to be decided in the suit. Hence a **prima facie** case exists in the suit. The plaintiff has also stated in the above-mentioned injunction petition that the plaintiffs are in peaceful possession of the land in dispute and thus there is **balance of convenience** in favour of the plaintiff. **The plaintiff has also stated that the defendants are changing the physical feature of suit land by way of construction of many phus chhatti (Teena) over the suit land (which is not a permanent structure and can be easily demolished if the suit is decided in favour of the plaintiff), thus the plaintiff has failed to prove that the injury which the plaintiff is likely to suffer is unquantifiable i.e whether they will suffer irreparable loss if the above mentioned petition of temporary injunction is not granted in favour of the plaintiff.**

Considering the above discussed facts and circumstances of the case, **temporary injunction petition under Order 39 rule 1 and 2 CPC dated 15-02-2024** filed by the plaintiff stands **rejected**.

Put up on 03-04-2025 for further proceeding.


Civil Judge (Jr. Div.)

Banmankhi, Purnea