

IN THE COURT OF DISTRICT JUDGE-V, SAHARSA

Present: Mohd. Tarique Mustafa, District Judge-V, Saharsa.

Civil Miscellaneous Appeal No. 08/2024

Dated : 08.04.2026

1. Manjeet Kumar

1 (a). Saurabh Kumar

1 (b). Anurag Kumar Agrawal Both S/o- Late Kanhaiya Lal

Daruka & Nirmala Devi wife of Late Kanhaiya Lal Daruka

2. Ratan Kumar Mishra (Karpardar appellant)

Son of Late Tirpit Mishra, At and P.O. Khajuri, P.S- Bakhtiarpur,

District- Saharsa

..... **Appellants**

Vrs.

1. Dukhran Yadav S/o- Late Ludan Yadav

At and P.O. Sakra Paharpur, District- Saharsa

2. Harilal Yadav S/o- Late Sukhdev Yadav

3. Lalita Devi W/o- Gorelal Yadav

Both village Shankarpur, Fakirna Tola, P.O- Balwahat, P.S. Anchal-

Simri Bakhtiarpur, District- Saharsa

..... **Respondents**

Ld. Counsel for the Appellants : Shri Dharendra Kumar Thakur, Adv.

Ld. Counsel for Respondents : Shri Veerendra Kumar Sinha, Adv.

Date of Order : **08.04.2026**

Present : Mohd. Tarique Mustafa
District Judge-V, Saharsa

ORDER

1. Attendance has been filed on behalf of both parties. Today the record has been placed before me for order.
2. This Civil Misc. Appeal arises out of order dated 12.06.2024 passed by

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learned Sub-Judge, Simri Bakhtiarapur, Saharsa in Title Suit No. 611/2023 by which the Ld. Trial Court refused to grant temporary injunction in respect of the land described in schedule 2 of the suit land of the plaintiff.

3. This Misc. Appeal originally has been filed on behalf of the Kanhaiya Lal Daruka S/o- Late Mahadev Lal Daruka who was a plaintiff before Court below. The said Kanhaiya Lal Daruka was died during the pendency of Appeal hence his name is deleted vide order dated 09.01.2025 from the Memo of parties of this appeal and in his place his legal heirs and successors namely 1. Manjeet Kumar 1(a). Saurabh Kumar 1(b). Anurag Kumar Agrawal both sons of Late Kanhaiya Lal Daruka and Nirmala Devi wife of Late Kanhaiya Lal Daruka, substituted in the memo of parties in this appeal.

Brief Facts:

4. The case of the appellants/plaintiffs is that the plaintiffs acquired 1 kattha 8 dhur land in village Shankarpur, Thana No. 14, old khata 107, old khesra 123 new khesra 286 which is a part of 5 kattha 5 dhur land acquired by plaintiffs by way of registered sale deed no. 2381 and 2382 in the year 1973. It was further submitted that the defendants are trying to dispossess the plaintiffs on the basis of forged documents and on dated 02.06.2023, they started dumping sand and cement on the said land and on dated 03.06.2023 started digging for laying foundation and constructing wall thereon, regarding which proceeding under section 144 Cr.P.C. was initiated as Misc. Case no. 254/2023 before SDO, Simri Bakhtiyarpur. The defendants are authoritarian and are forcibly trying to construct structure on the disputed land which may cause irreparable loss to the plaintiff. The records of right of disputed land was recorded in the name of Mainpuri. It is submitted by the plaintiff that the Shekh Mohd. Masood Alam S/o- Shekh Abdul Rahim has acquired the disputed land from ancestors of Khatiyani Raiyat Mainpuri in the year 1945. The said Shekh Mohd. Masood Alam in his

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turn had executed and registered the sale deed bearing sale deed number 913 dated 03.03.1953 in favour of Jai Kumar Khatan. After execution and registration of sale deed no. 913 dated 03.03.1953 Jai Kumar Khatan has mutated his name in the Serista of Bihar Sarkar vide Jamabandi No. 57/5424. Thereafter, the Jai Kumar Khatan who acquired the disputed land by way of registered sale deed no. 913 dated 03.03.1953 in his turn executed and registered a sale deed bearing sale deed no. 2381 and 2382 in the year 1973, in favour of plaintiff and the plaintiff merged the land with his other land in khesra no. 124 and has been in possession thereof. The not final khatian is also in the name of plaintiff's vendor and the notice of consolidation was also in the name of plaintiff. The Ld. Counsel for appellants/plaintiffs further submitted that, the name of Kanhaiya Lal Khetan in the northern side boundary as depicted in sale deed No. 315 dated 18.01.2019 and also in police report shows the possession of the appellant/plaintiff over the disputed land. Thus, the prima facie case and balance of convenience lie in favor of plaintiff and if order of injunction is not passed against the defendant, it may cause irreparable loss to the plaintiff. The defendants only intent to harass the plaintiffs with the so-called sale deed no. 315 dated 18.01.2019 though the said sale deed has no value in the eye of law. There is no prima facie case in favor of the defendants and the balance of convenience also does not lie in their favour and there is no possibility of irreparable loss if the injunction order is passed against them. Therefore, it is prayed that the injunction order be passed against the defendants and they be directed to not construct any new structure on the disputed land till the decision in the case.

5. The Civil Misc. Appeal against the order dated 26.06.2023 passed by the Ld. Lower in T.S No. 611/23 on the ground that the order is bad in the eye of law. That the order of the Ld. Lower court is erroneous in law. That the Ld. Lower court has not approached the case from broad area probable point

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of view. That the Ld. Lower Court have not decided the legally the prima-facie case, balance of convenience and injury.

6. The injunction petition was vehemently opposed by the defendants and it was submitted by the Ld. Counsel for the defendant that the plaintiffs have no right to file this injunction petition and they have filed this petition on the basis of wrongly stated facts which is not maintainable in the eyes of law. It was further submitted that this injunction petition was barred by the Specific Relief Act and has been filed by concealing facts and therefore is not maintainable. The disputed land situated in Mauza Shankarpur, Thana-Simri Bakhtiyarpur, District- Saharsa, in old khata 107, old khesra 123 area 5 kattha 5 dhur was recorded in Cadastral Khatian in the name of Mainpuri Mandal/Mandal, who is ancestor of defendant no. 2 and 3. The disputed land during cadastral survey was mutually divided among Mainpuri Mandal, ancestor of defendant no. 2 and 3 and Nabu Mandal and therefore, the disputed land was recorded in the name of Mainpuri Mandal in CS khatian and he got right, title, interest and possession thereon. The Mainpuri Mandal was died leaving behind his sole son namely Babulal Gope. Babulal Gope had also no more alive died leaving behind a son namely Sukhdeo Yadav. Sukhdeo Yadav also died leaving behind his two sons namely Harilal Yadav(Defendant No. 2) and Gorelal Yadav. Gorelal Yadav also died leaving behind his wife namely Lalita Devi (Defendant No. 3) and four sons namely Pandav Yadav, Jeetan Yadav, Tarachand Yadav and Karan Yadav. The disputed land and other than the disputed land, recorded in the name of Mainpuri Mandal during C.S operation given by the malik zamindar in the name of ancestor of defendant no. 2 and 3 to the State of Bihar. After the Zamindari abolition, malik zamindar gave the vesting return of the disputed land in old khata no. 107, Old khesra 123 area 5 kattha 5 dhur, apart from other lands, in the name of Babulal Gope, ancestor of defendant no. 2 and 3 on the basis of right, title, interest and possession and accordingly they got

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the tenancy right in by the State of Bihar. It was further submitted that after the death of Mainpuri Mandal the said land is devolved upon his legal heirs and successors and they got the right, title, interest and possession over the disputed land. Hence on the basis of the right, title, interest and possession, the defendant no. 2 and 3 have executed and registered a sale deed 415 dated 18.01.2019 of the disputed land in old khata no. 107, old khesra 123 area 5 kattha 5 dhur in favour of defendant no. 1, Dukhran Yadav and gave the possession thereof. Defendant no. 1 after getting the possession constructed a boundary wall and house and has opened a goat farm and carry his business. The jamabandi no. 97 and vesting return is in the name of Babulal Gope, the rent of which is being paid by the defendants. On the basis of sale deed no. 315 dated 18.01.2019, jamabandi part no. 4 page no. 6 of disputed land is in the name of Dukhran Yadav and he has been paying the rent receiving the receipt thereof. Mainpuri Mandal and his descendants had never sold the land to Shaikh Md. Masood Alim and he has never got the title and possession of the land. The documents submitted by the plaintiff are forged and wrong and are not related to the disputed land. It was further pleaded that the proceedings of recent survey in the village was changed into consolidation and the consolidation proceedings related to the disputed land is not final and the matter is still sub judice. Apart from the disputed land, there are other lands also in old khata 107 old khesra 123 and Harilal Yadav and Lalita Devi have been in peaceful possession of the disputed land since 1902-04 and thus they also got the right, title, interest of the land through law of adverse possession. A case was also filed in the court of DCLR and SDO, Simri Bakhtiyarpur, which was decided in the favour of defendants. The defendants have got strong prima facie case in their favour and the balance of convenience also lies in their favour. The plaintiffs have filed injunction petition before court below without having any substantial ground and with the intent to dispossess the defendants. From perusal of "para-

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13ka" of the plaint, it is clear that the plaintiffs have claimed relief of delivery of possession by demolishing wall constructed by defendants and thus the plaintiffs have failed to prove prima facie case and thus, in case of order of injunction, defendants will suffer irreparable loss. Therefore, the injunction petition is ought to be rejected with costs.

The petition u/s- 39 Rule 1 & 2 of C.P.C has been filed by the plaintiff for temporary injunction against defendants for restraining them from going upon the schedule-2 of suit land, stop them from making any construction or to deal with the same in any manner so as to prejudice the interest of the plaintiff.

7. The law regarding grant of temporary injunction and interlocutory order is covered under Section 94(c) and under Order 39, Rule 1 & 2 of the CPC. The cardinal principles for grant of temporary injunction is well settled. No temporary injunction should be issued unless the three ingredients are made out, namely, (I) **Prima Facie** case, (ii) **balance of convenience** and (iii) **irreparable injury** which could not be compensated in terms of money. If a party fails to make out any of the three ingredients he would not be entitled to the injunction and the Court will be justified in declining to issue injunction.

8. **The Hon'ble Supreme Court in Dalpat Kumar Vrs. Prahalad Singh report in (1992)1 SCC 719**, it has been observed as follows: Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparably injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean there must be no physical possibility of repairing the injury, but means only that the

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injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compared it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction ending the suit.”

9. The Hon'ble Supreme Court in **Kishoresinh Ratansinh Jadeja Vs. Maruti Corpn. Reported in (2009) 11 SCC 229** and **Hazrat Surat Shah Urdu Education Society Vs. Abdul Saheb report in 1988 (4) Judgments Today 232; MANU/SC/0651/1988** held that it is well established that while passing an interim order of injunction under Order 39, Rules 1 and 2 CPC, the Court is required to consider:-

- i. whether there is a prima facie case in favour of the plaintiff;
- ii. whether the balance of convenience is in favour of passing the order of injunction; and
- iii. whether the plaintiff will suffer irreparable injury if an order of injunction would not be passed as prayed for.

10. The word 'prima facie case' apparently indicates something which at first impression makes out a triable case. The term 'prima facie case' should not be confused with the term 'prima facie title' which has to be established at the trial upon permitting the parties to lead evidence. Thus, it means a

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substantial question which has been raised and which upon first sight needs to be investigated and decided on merits.

11. The word 'balance of convenience' denotes that the court must be satisfied that the comparative mischief and hardship which is likely to be caused to the person seeking injunction is more than the inconvenience likely to be caused to the other party by granting such injunction.

12. The word 'irreparable injury' guides the court to be satisfied that the refusal to grant injunction would result in such injury which cannot be compensated in term of costs or otherwise and the person seeking injunction needs to be protected from the consequences of apprehended injury.

13. When dealing with aforesaid three ingredients, the court must refrain from holding a mini trial. The Court should make an endeavor to test the relevant pleadings in the light of the principles as noted above and if it finds that there is a contestable issue which requires evidence of the parties to be decided and balance of convenience and irreparable injury is in favour of the party seeking the injunction then the status be preserved, as at the initial stage the rights of the parties are in an inchoate stage. The court would require the evidence to determine the rights of the parties which can only be crystallized after trial and can enable the court to form a definite opinion whether the plaintiff has a reason strong enough to enable the court to pass a decree in his favour and if not, the suit is required to be dismissed.

14. From perusal of materials available on record as well as the petition and order passed by Ld. Trial Court Sub Judge, Simri Bakhtiarapur, Saharsa on dated 12.06.2024, it appears that the appellants/plaintiffs claiming their right, title, interest over the suit land on the basis of sale deeds no. 2381 & 2382 of the year 1973 executed by Jai Kumar khetan, and respondent no. 1/defendant no.1 claiming his right, title, interest on the basis of sale deed No. 415 dated 18.01.2019, executed by defendant no. 2 and 3, the decedents of

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Khatiyani Raiyat Mainpuri Mandal. Both parties are claiming their right, title, interest and possession over the schedule-2 of the suit land describe in the plaint. It appears that the suit is filed by the appellant/plaintiff is for declaration of right, title, interest in favour of the plaintiff and sale deed Number 315 dated 18.01.2019 is to be cancelled and further prayed that delivery of possession of the land mentioned in schedule-2 of the suit land. It is also appeared from the prayer of the plaintiff in the plaint that the plaintiffs seeks delivery of possession of the land describe in schedule-2 of the suit land which means that the plaintiffs are not in actual, physical and peaceful possession over the schedule-2 of the plaint. That both the parties claiming their title, interest and possession over the suit land on the basis of their respective sale deeds. The respondent no. 2 & 3/ defendant no. 2 & 3, the decedents of Khatiyani Raiyat Mainpuri Mandal, have denied that their ancestors had not executed and registered any sale deed in favour of Shaikh Mashood Alam i.e plaintiff's vendor namely Jai Kumar Khetan, in this way these defendants/respondents cast a cloud over the right title, interest and possession of the plaintiff over the schedule-2 of the suit land. Considering the above facts and circumstances including the material placed by the parties no prima facie case made out in favour of appellants/plaintiffs the matter may be decided after hearing the parties and materials either oral and documentary evidence produced by the parties so it is apparently no prima facie material available on record at this juncture and when the prima facie title and possession not properly placed by the appellants/plaintiffs in that circumstances the question of balance of convenience and not to be decided and when the prima facie and balance of convenience not in favour of appellants/plaintiffs so the question of irreparable loss not arise at this stage.

15. Having gone through the impugned order, which shows the order has been passed by Ld. Trial Court Sub-judge-I, Simri Bakhtiarapur in Title Suit

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No. 611/2023, after due consideration of facts and decided the injunction petition on merit and rightly held that necessary ingredients for grant of injunction in favour of appellants/plaintiffs. In view thereof due to lack of substantial grounds, it requires no interference in the order dated 12.06.2024 passed by the Ld. Trial Court, Sub-Judge-I, Simri Bakhtiarapur, Saharsa in Title Suit No. 611/2023, hence the order dated 12.06.2024, passed by the Ld. Trial Court, Sub-judge-I, Simri Bakhtiarapur, Saharsa in Title Suit No. 611/2023 is hereby affirmed.

Accordingly the Civil Miscellaneous Appeal filed by the appellants/plaintiffs is hereby ***Dismissed***.

That the Office Clerk is directed to send a copy of this order along with the L.C.R to the Court concern for the needful and then deposit the record in Record Room as per rules.

Dictated and corrected by me.

Sd/-

(Mohd. Tarique Mustafa)
District Judge-V, Saharsa
08.04.2026

Sd/-

(Mohd. Tarique Mustafa)
District Judge-V, Saharsa
08.04.2026

Order Date	08.04.2026
Uploading Date	
Uploaded By	Ujjawal Kumar (Stenographer)