

In The Court Of Sub-Judge-I, Sonapur

Sub-Division- Sonapur at Saran

Partition Suit- 89/2021

Date	Order
07/08/25	<p>Pairvi of both sides filed. Heard on petition dated 30-09-2021 filed by plaintiff under Order 39 rule 01 & 02 read with Section 151 of C.P.C. That plaintiff has brought the suit to carve out his 1/20 Share in Schedule no. 01 and 1/5 share in Schedule no. 02 property by way of partition. That when the defendant has got knowledge about then they try to aleinate the disputed property in the name of unsocial element of a society. That defendant had executed six sale deeds during pendency of a suit. That the plaintiff is handicapped and economically weak person and if the defendants further sale the disputed land than it is difficult for plaintiff to contest in the suit. That balance of convineance is in the favor of plaintiff. If the defendants is not restrained to sale or to make new construction on dispuited land then the plaintiff will suffer irreperable loss. That prima-facie case is made out in favor of plaintiff hence, the petitioner pray to allow the injunction.</p> <p>Copy of the petitioner has been served to the defendant and showcause has been filed by them and submitted that the defendants appeared in the suit and filed their written statement. On perusal of para-15 of written statement it transpires that partition has been already taking place between their parties and the plaintiff has no right to file this partition suit. That on the basis of partition respective parties are in right title and possession on their share. That after partition by meats & bounds one sale deed dated 29-03-1957 has been executed which is admitted by ancestor of both parties. That defendants ancestor got the property through "takshishnama". That plaintiff has no concern about the property of Raghuvar Sah & his family. That the suit land was purchased much before the birth of plaintiff and the purchaser are in right title and possession on the said land and they also deal with that property. That plaintiff was born and after his birth he suffer from Polio disease since 09-07-1981. That defendant no. 01 expense a lot of money in the plaintiff's treatment. After that the plaintiff get recovered from his disease. After that plaintiff started living with his parents and gradually he attains the age of maturity his mental state became unstable. Then after the defendant provide treatment on his own expense. That the plaintiff never co-operated in his family business. That there was partitioned among sons of Raghuvar Sah and all share holders are in possession on their share. That is this suit no prima facia case is made out in favour of plaintiff, no balance of convenience is in favour of</p>

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plaintiff and also if the injunction not granted then plaintiff will not suffer irreparable loss.

Heard both sides and perused records. That one Raghuwar Sah is the common ancestor of parties to the suit. That Raghuwar Sah died leaving behind four sons namely Virada Sah, Bachchu Sah, Sita Ram Sah and Ram Prasad Sah. That heirs of Ram Prasad Sah are plaintiff and defendant 1st party, heirs of Birda Sah is defendant 2nd party, heirs of Bachchu Sah is defendant 3rd party and heirs of Sitaram Sah is defendant 4th party. That after death of Raghuwar Sah his elder son namely Birda Sah became Karta of his family. That what ever property was acquired in joint family, that documents were maintained by Birda Sah and after death of Birda Sah it were retained by his legal heirs. That parties to the suit have family business of gold and utensils shop and also other business to lend money on interest. Due to which they have good family income and by the source of family income numbers of moveable and immoveable properties was purchased in the name of Musmat Jiwaninand other family members. On which all family members have right. That in year 1970 there was partitioned among the sons of Raghuwar Sah in respect of moveable property and there was oral partition of schedule-I land on which all sons of Raghuwar Sah are in possession on 1/4 share according to their share but partition was not done by meats and bounds. But there was no partition of rest immoveable property and all legal heirs of Raghuwar Sah are in joint possession on suit land. That by oral partition defendant 1st party legal heirs of Ram Prasad Sah got share which is mentioned in schedule-2 of plaint, on which plaintiff and defendant 1st party are in joint possession. That plaintiff seek 1/20 share in schedule-I land 1/5 share in schedule-2 land. That it is suit for partition and hence both parties have share in the suit land. Also plaintiff and defendant No. 01 is son and father in relation. In Annamalai Vs Muthiah, AIR 2005 SC 1968 held "Each Co-owner has interest in every inch of joint property until partition. Unless a party shows exclusive possession, injunction may not be granted against co-owner." In this case parties to the suit are co-sharer and partition yet not be done. In such case all of the co-sharer have right on the suit land. Advocate commissioner has submitted report regarding status of the land. On perusal of report it transpires that plaintiff are not in possession on the disputed land and also no any construction is going on the disputed land. Considering the above facts and circumstances although prima facia case is made out in favour of both parties but balance on convenience is not in favour of plaintiff and also if the injunction is not allowed then plaintiff will not be suffered any irreparable loss. Hence petition is here by rejected and disposed. Next dated isfor further proceeding.

Mamish Kumar
07/08/25
Sub Judge, I.
Sonapur, Jaram