

In The Court of Sub Judge-1
Sonapur Sub Division at Saran.

P.S. 63/2023

Tamodar Rai
v.

Bhageshar Rai.

04/06/25. Pairani of both sides bMed. Heard
on petition dated 20/07/2024 bMed
under Order 39 Rule 12-2 read with
s/s. 151 of C.P.C by plaintiff. That
plaintiff bMed this suit for partition
to get $\frac{1}{2}$ share in schedule-1 land
and to carve out plaintiff share.
That in the present suit dependant
appeared and contest in this suit.
In spite of knowledge of the suit
dependant stored construction material
on disputed land and try to
construct on it. Further plaintiff
submitted that Devraj Rai was
common ancestor of plaintiff and
dependant. That Devraj Rai has
two sons namely B. Phagu Rai and
Kewal Rai. That Phagu Rai has two
sons namely Makeshar Rai and
Bhageshar Rai and Makeshar Rai
has one son namely Tamodar Rai
Contd.-

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04/06/25

who is plaintiff in this suit. That Kewal Rai has two sons namely Shambhu Rai and Sugim Rai. That there was previous partition between Phagu Rai and Kewal Rai. Hence there is no dispute with legal heirs of Kewal Rai. Hence they are not made party in this suit. That in this suit, dispute between only legal heirs of Phagu Rai, in which plaintiff share is $\frac{1}{2}$ share and defendant share is $\frac{1}{2}$ share. That all disputed land schedule 1 and 2 are in joint. That defendant persons are strong and stubborn. They try to alienate suit property and also try to change nature of land by making constructions on it. If the defendant succeeds in alienate suit property then plaintiff suffer irreparable loss and also balance of convenience is in favour of plaintiff and *prima facie* case Contd. —

Order made out in favour of plaintiffs.
04/06/24

Copy of the petition has been served upon defendant.

Defendant filed rejoinder and opposed petition. Defendant further submitted that Advocate Commissioner report is on the record. In perusal of report it transpires that on disputed land there is construction of asbestos roof, on some part, and in south side of property there is "pucca" construction on some part, and on some part two rooms is constructed with iron gate, grill is also fitted.

Let. Advocate Commissioner also reported that on khata No 427, khescra No. 357 area of katta 12 akhar found only Pucca house with out plaster in which house iron gate was fitted. ~~That~~ That no construction was going on the suit land, nor any building material was found on suit land. That plaintiff's lot

Order

Contd.
04/06/25

Advocate was also present on the suit land, who puts signature on memo "Najari ~~ka~~ vaksha". That defendant was stated in his wis. that there was partition between both parties, and both parties are in possession on their share. That during pendency of suit file petition of amendment to add some ~~for~~ plots in plaint. But plaintiff already states about his share. Hence for new plots his share not applies. On this ground plaintiff's suit is liable to be dismissed. That plaintiff has brought suit on 22 plots, but not mentioned on which plot construction was going on. Hence ~~as~~ prima facie and balance of convenience is made out in favour of ~~plaintiff~~ defendant. Hence pray to reject injunction petition.

Heard both sides and perused record. It is admitted
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01/06/25
Content that Devraj Rai has two sons Phagu Rai and Kewal Rai. There was partition between both brother Phagu Rai and Kewal Rai. In this suit only Phagu Rai property in dispute and legal heirs of Phagu Rai are parties. That there are several plots mentioned in suit land for partition. But the plaintiffs did not mentioned in plaint that on which plot injunction shall be granted. Lt. Advocate Commissioner submitted report on status of land. On perusal of report it transpires that on disputed land bearing khata No. 123, khasra No. 354, area 16 dhur, one construction was found with ~~at~~ asbestos roof along with huck house, hand pump, and cattle house with old house.

On land bearing khata khata No. 178, khasra No. 356, area 4 katta 17 dhur found three huck
Content -

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09/06/25

house, four trees, one hand pump, and berandah with alabastic roof. and in South side of plot @ found construction, and in East about 200 bricks was stored. and also found newly constructed two rooms and wall on this land.

On plot bearing khata No. 427 Khosra No. 357 area of Katta 12dhur found one house which was without plaster. That iron gate was bitten in that house.

Further in report Let. Advocate Commissioner mentioned in his report that he did not find any construction material on disputed land and also submitted that no construction was going on, on the suit land.

That ~~at~~ this is the suit of partition, hence it is admitted that suit lands belongs to the both parties. Dependant submitted

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04/10/25

that there was previous partition between both parties, but did not mention date of partition, mode of partition and specific schedule land of partition. Also on perusal of Advocate Commissioner report it transpires that some construction must be going on the suit land. In ~~the~~ support plaintiff has filed two photographs of constructed house, that construction house is with out roof, which supported Advocate Commissioner report. That plaintiff has filed Complaint in West police station, Sindh regarding construct, then file petition before B.S.D. Some and also send complaint copy to S.P. Saran, Photo copy of petition, along with view construction house also filed. Considering all facts and circumstances found that if defendant able to succeed in ~~the~~ alienate land the plaintiff would suffer irreparable loss. @ Plaintiff

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06/25

brought suit on total 22 plots but Advocate Commissioner submitted a report on only three plots. As suit of partition brought on all plots. Hence it is the duty of court to protect the suit land. As it is the suit of partition. Hence injunction petition cannot be decided in favour of one party. But in the interest of justice it is necessary that suit property must be saved. Hence both parties are directed to maintain status quo on suit land till further order of the court. Accordingly injunction petition stand dismissed.

Next date is _____ for further proceeding

Mansur
04/06/25
Sub Judge. I
Sonapur (Saranj)