

The Court of Munsif, Pupri (Sitamarhi)

Case No. T.S. 36/2017 Reg No 36/2017

Md. Ojaiz

& Anr./Ors. (Plaintiff/s) Vs. Ishrat Khatoon &
Anr./Ors. (Defendant/s)

Serial No.	Date of order of proceeding	Order with signature of the Court	Office action taken with date
	<u>19.07.22</u>	<p>Today the record is fixed for order. Both the are present through their Ld. Counsels.</p> <p style="text-align: center;"><u>Injunction order</u></p> <p>The applicant filed an application dated 26.06.21 under order 39 rule 1 & 2 read with section 151 of the C.P.C praying for temporary injunction restraining the defendants from constructing house over the suit schedule property in pending disposal of the suit.</p> <p>Heard, the learned counsel for the parties and perused the record.</p> <p>The brief facts of the case as has been stated in the plaint, interim injunction application and the accompanying affidavit dated 26.06.2022, is that the defendant, who is a full blood sister of the plaintiff, came into possession over the suit land through a sale deed dated 05.01.2012 created by Md. Obaidur Rahman i.e., father of both the parties. However, the plaintiff is claiming over this suit property having Khata- 340, R.S.P. No-3091, area- 16 Decimal through a sale deed dated-20.05.1967 executed by Kabeeruddin i.e., grandfather of plaintiff. The applicant came to know about this sale deed after death of his father only i.e. in the year of 2016. Now as per the applicant, on dated 25.05.2022,</p>	

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		<p>defendant is constructing house over the suit land property. Moreover, when the applicant raised objection there, he was threatened to cause assault. Thereafter, applicant with a view to restrain the construction, approached to the local police. But, SHO, Nanpur, after making a due inquiry shows his inability to restrain the defendant in absence of any injunction order from the Court. Accordingly, the applicant filed this injunction application restraining the defendant from constructing house over the suit land property till disposal of this civil suit.</p> <p>Respondent filed its objections to the application for temporary injunction and stated, inter alia, in reply that she is in possession over the suit property and residing thereupon along with her family. And the applicant has never been in possession over the property. Further, it has been contended that construction of house over the suit land by this defendant has already been done long before institution of the suit & defendant is residing there along with her family members. Since, there is no merit in this injunction petition filed by the plaintiff and it is fit to be rejected.</p> <p>As it is evident from the aforesaid stands of the parties, both the parties are brother & sister in relation. Now, plaintiff and defendant are claiming their title over the suit property through two different registered sale deed created by their fore father on and father respectively in the year of 1967 & 2012. It is admitted fact that defendant has possession over the suit land property earlier to institution of this suit. And from the facts available on the record, it also appears that she is residing over the suit property</p>	

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		<p>after constructing a house along with her family members.</p> <p>The law providing remedy of temporary injunction as provided under Order 39 of CPC is an equitable relief and grant of temporary injunction is governed by three basic principles i.e. prima facie case; balance of convenience; and irreparable injury. Further, in Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd (AIR 1999 SC 3105) the Hon'ble Apex Court observed the other considerations which ought to weigh while hearing the application for the grant of injunctions are as below : (SCC page 14, para 24)</p> <p>“ i) extent of damage being an adequate remedy;</p> <p>ii) protect the plaintiff's interest for violation of his right though, however, having regard to the injury that may be suffered by the defendants by reason therefore;</p> <p>iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;</p> <p>iv) no fixed rule or notion ought to be had in the matter of grant of injunction but on the fact and circumstances of each case—the relief being kept flexible;</p> <p>v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable</p>	

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		<p>loss and injury keeping in view the strength of parties' case;</p> <p>vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;</p> <p>vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.”</p> <p>Further, from the above facts undoubtably a prima facie case is made out by the applicant which needs adjudication at the trial.</p> <p>However, application of the plaintiff no way discloses whether the defendant doing new construction over the suit property or not. And nothing has been filed in support of the fact that he has approached with SHO, Nanpur and what finding of the SHO was recorded. However, on perusal of the plaint, written-statement it appears that suit property is under possession of the defendant & she is occupying this land after building a house earlier to the institution of this suit. Further, from the facts submitted before the Court it couldn't be ascertained that whether the suit property in dispute is in danger of being wasted or damaged and in what manner or sense this would cause applicant irreparable loss. Moreover, it is an admitted fact that defendant is in possession over the suit property, therefore it is also not a case that defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to suit property. All the more the applicant has failed to show that defendant is causing change in the nature of property which either may diminish its</p>	

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value any way or may cause irreparable loss to him. Further, this suit has been brought by the plaintiff to recover the possession of suit land property and defendant have settled possession over the suit land and she is occupying this property by building a house. Moreover, she came into possession over the land in dispute peacefully under a sale deed executed by her father itself. Therefore, granting this interim relief in favor of defendant may cause inconvenience to the defendant. Therefore, it can be said that balance of convenience is more tilted in favor of defendant rather to plaintiff.

Hence, on the basis of discussions made above and observations made in preceding paragraphs it appears that applicant has a prima facie case but he failed to show that what sort of injury or loss may be caused to the plaintiff with respect to suit property. Moreover, defendant is occupying the land as residence and under the facts & circumstances existing in this case granting injunction might cause inconvenience to the defendant itself. The interim injunction application dated 26.06.22, therefore, is rejected by refusing to grant remedy of temporary injunction. Accordingly, this application is disposed of.


(VINIT KUMAR SINGH)
MUNSIF
PUPARI, SITAMARHI