

**IN THE COURT OF SANJEEV KUMAR, MUNSIF, NARKATIAGANJ, WEST
CHAMPARAN**

T.S NO- 121/2023

AFTABUDDIN & OTHERS.....PLAINTIFFS

Vs

SEIKH SUNAD & OTHERS.....DEFENDANTS

DATE	ORDER	REMARKS
29.07.2025	Attendance filed on behalf of Plaintiffs and Defendants. Case called out for hearing on the point of Temporary Injunction O-39 Rule (1) & (2) and section 151 of C.P.C. The present petition has been filed by the Plaintiffs against the Defendants for interim injunction under order 39 Rule-1&2 and section 151 on dated 05.06.2024. Show-cause rejoinder of aforesaid petition has been filed on behalf of Defendant no.1 on dated 03/07/2025 Heard the Learned counsel for Both the parties and perused the Petition of Plaintiff and Rejoinder of the Defendants. <u>Plaintiff Submission:-</u> The Plaintiffs have filed this suit for the declaration of title and recovery of possession regarding the land mentioned in Schedule No. (B) of the plaint, along with a prayer for a permanent injunction, and to declare the sale deed dated 08/01/2010 mentioned in Schedule No. (C) as null and void. Sheikh Mohammad Arif had great affection with Plaintiff No. 01 and the father of Plaintiffs No. 02 to 06, Sheikh Kaishruddin. Therefore, regarding the 08 Kattha of land in Khesra No. 1501, which he had received from his father, he expressed a desire to gift it to his two sons to gift it to Plaintiff No. 01 and the father of Plaintiffs No. 02 and 06, which both accepted. Subsequently, Sheikh Mohammad Arif executed and registered a gift deed dated 01/07/1953 for the land in Schedule No.(B). Witnesses to this deed included Sekhawat and Atar Hussain. Sheikh Mohammad Arif handed over possession of the gifted land to both his sons. Since the day of the gift, Plaintiff No. 01 and Plaintiffs No. 02 to 06 have been in continuous possession, which is known to all brothers and relatives. The mutation was established in the name of the Plaintiffs in Anchal Sikta, and they have been paying land revenue to the	

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Continue 29.07.2025	Government of Bihar every year. The Plaintiffs hold title and possession over the land in Item No. (B) based on this gift. The registered sale deed dated 08/01/2010 mentioned in Schedule No. (C) is completely illegal, unlawful, without consideration and a fraudulent document. It was executed by a person who had no title, authority, or possession over the land. No title or possession was transferred to Defendant No. 1 (the purchaser) through this document; it is a void document. The boundaries and area mentioned in that 2010 document do not even exist on the ground. Defendant No. 01 has started creating hurdles and interference in the possession of the Plaintiffs, which necessitated the filing of this suit. The allegations made by the Plaintiffs in the main plaint should be considered a part of this injunction petition and should be deliberated upon during the hearing. From the facts stated in the plaint and the materials available on record, it is clear that a prima facie case and the balance of convenience lie in favor of the Plaintiffs. If the Defendants are not restrained from interfering or creating trouble in the Plaintiffs' possession of the suit land during the pendency of the case, the Plaintiffs will suffer irreparable loss. Therefore, it is prayed that in light of the above facts, an injunction order be passed against Defendant No. 01, restraining them from creating any hindrance, obstacle, or disturbance in the cultivation and possession of the Plaintiffs over the land in Schedule No. (B), and from illegally dispossessing the Plaintiffs until the final disposal of the case. <u>Defendants Submission:-</u> The injunction petition filed by the Plaintiffs is not maintainable from a legal or factual standpoint and is liable to be dismissed. The current suit filed by the Plaintiffs to declare title and possession over the land in Schedule No. "B" and to declare the document in Schedule No. "C" as illegal, void, and without consideration is not legally valid, and the Plaintiffs are not entitled to any relief.	
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Continue 29.07.2025	It is correct as stated by the Plaintiffs that Sheikh Dhuran had four sons namely Sheikh Sekhawat, Mohammad Hussain, Uttar Hussain and Ali Hussain. It is also correct as stated in Para 4 of the plaint that Sheikh Sekhawat had three marriages. It is also correct that from the first wife Bibi Sahida, one son Sheikh Mohammad Arif was born. It is correct that the second wife was Dhundhuna and the third was Sahima. From Dhundhuna, one son Abdul Wahid and one daughter Sariyat were born. From Sahima, two sons Vasi Ahmed and Azhar Hussain were born. Sheikh Azhar Hussain had five sons: Irshad, Naushad, Jamshed, Khurshid, and Durshed. The statement in Para 7 of the plaint is partially true and partially false. It is true that Sheikh Sekhawat received 9½ Kattha of land in Khesra 1501 through a family partition among his brothers, over which he remained in possession. The statement in Para 8 of the plaint is completely false and concocted. The claim is based on a pre-planned conspiracy and is far from the truth. The Gift Deed dated 01/07/1953 allegedly executed by Mohammad Arif in favor of his two sons is a fraudulent and forged document created recently. Mohammad Arif had no right to execute a gift deed because Sheikh Sekhawat had not given any land to anyone in 1950. Sheikh Sekhawat remained the absolute owner of his property during his lifetime. No son had any share while he was alive. After his death, his property was partitioned (Khangir Batwara) among his four sons (Mohammad Arif, Abdul Wahid, Vasi Ahmed, Azhar Hussain) and daughter Sariyat. In this partition: Sariyat: 1½ Kattha, Mohammad Arif: 2 Kattha, Abdul Wahid: 2 Kattha, Vasi Ahmed: 2 Kattha, Azhar Hussain: 2 Kattha Totaling 9½ Kattha in Khesra 1501. The statements in Para 9 to 11 and 17 are false. The claim that Mohammad Arif gifted 8 Kattha to his sons in 1953 out of love and affection is fabricated.	
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Continue 29.07.2025	It is false that the Plaintiffs have been in possession since the date of the alleged 1953 gift deed. Defendant No. 01 has been in peaceful possession of 4 Kattha of land in Khata 299, Khesra 1501, Mauza Shikarpur, since the day of purchase. Defendant No. 01 has currently planted a paddy crop on the disputed land. After the family partition, all parties remained in possession of their respective shares. After Azhar Hussain's death, his share passed to his five sons (Irshad, Naushad, Jamshed, Khurshid, and Durshed), who are Defendants 3 to 7. When Defendants 2 to 7 needed money for personal reasons, they offered to sell their share of Khesra 1501 to the Plaintiffs. The Plaintiffs refused. Subsequently, they approached Defendant No. 01 (Sheikh Sunad). Following their request, a Sale Deed (Bainama) dated 08/01/2010 was executed in favor of Defendant No. 01. He has been in possession since that day, a fact known to the Plaintiffs from the start. The Circle Officer, Sikta, confirmed the peaceful possession of Defendant No. 01 over the 4 Kattha land and created a computerized Mutation No. 211926000669206. Defendant No. 01 has been paying land revenue regularly. The Plaintiffs had previously filed a case under the Bihar Land Dispute Resolution Act 2009 (Case No. 35/10-11) against Defendant No. 01. After the Defendant filed his reply, the Plaintiffs withdrew the case, and the court passed an order on 14/12/2010 closing the proceedings. The disputed land is the purchased property of Defendant No. 01, over which he has peaceful possession. The Plaintiffs have never been in possession for even a moment; therefore, the question of dispossessing them does not arise. It is therefore prayed to accept this Show Cause and dismiss the Plaintiffs' Injunction petition dated 05/06/2024 with special costs. It is well settled that , before granting the temporary injunction , the judge has consider whether the application is falling into below – mentioned categories, has Plaintiff/applicant has shown	
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Continue 29.07.2025	following Points:- 1. Prima Facie Case. 2. Irreparable Injury. 3. Balance of Inconvenience. 4. Other Factor. In every application , the applicant /Plaintiff must make out a prima-facie case in support of the right claimed by the applicant/Plaintiff. The Plaintiff / Applicant is given the burden to prove and satisfy the court by leading evidence or witnesses that he has prima facie case in his favour. <u>In Martin Burn Ltd. Vs R.N Banerjee AIR 1958 SCR 514</u> The supreme court held that a prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence led in support of the same were believed . it does not involve the determination of the conflict of evidence or complex question of fact and law, which call for detailed arguments. It further require that Plaintiff/ applicant should come before court with clean hands. If he suppresses material fact and evidence then he Is not entitled for the relief of Injunction and further point of balance of convenience , irreparable injury need not be considered in such case. <u>In Praksh Singh Vs.State Of Haryana, 2002(4) Civil L.J.71-</u> The Court has explained that Prima Facie does not mean that a Plaintiff/ Applicant should have a full proof case in his favour which will succeed in all probabilities. It means that the Plaintiff/ Applicant has a case which can not be rejected summarily or dismissed out right. It raises consideration which can be considered on Merit. The supreme Court in <u>Shanti kumar Panda Vs. Shakuntala Devi, AIR-2003, SCC –</u> ‘Where court held thus , At the stage of passing an interlocutory order such as application for the grant of ad interim injunction under Rule 1 or 2 of Order 39 of the CPC, the competent court	
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Continue 29.07.2025	shall have to form its opinion on the availability of prima facie case, the balance of Convenience and the irreparable injury . the three pillars on which rests the foundation of any order of injunction. <u>Is there any Irreparable Injury:-</u> Further the Applicant must satisfy the court that he will suffer irreparable injury if the injunction is not granted. the court is satisfied that the Plaintiff/applicant needs to be protected from the consequences of apprehended injury. An injury will be viewed as irreparable wherein there exists no certain monetary standard for calculating damages. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only mean that the injury must be material one i.e which can not be adequately compensated by damages. An injury will be regarded as irreparable where there exists no certain pecuniary standards for measuring damages. <u>In Best Sellers Retails India (P) Ltd. Vs. Aditya Nirla Nuvo Ltd.-(2012)6 SCC 792</u> – the Hon’ble Supreme court held that only prima Facie case alone is not sufficient to grant injunction and court held that – Yet , the settled principle of law is that even where prima facie case is in favour of Plaintiff/Applicant , the court will refuse temporary injunction if the injury suffered by Plaintiff/Applicant on account of Refusal of temporary injunction was not irreparable. Is there any Balance of convenience- The applicant must prove in this application that there is the balance of convenience must be in favour of the applicant i.e the Comparative mischief, hardship or Inconvenience which is likely to be caused to the applicant if the injunction is been refused. The balance of convenience comes into the picture when there is doubt as to the adequate remedies in damages available to either	
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