

IN THE COURT OF MUNSIF , NARKATIAGANJ , WEST CHAMPARAN

T.S CASE NO- 156/2013

SHIV PRASAD SINGHPLAINTIFF

Vs

KAILASH SHARMA & OTHERS.....DEFENDANTS.

DATE	ORDER	REMARKS
25.09.2023	<p>Attendance filed on behalf of both parties.</p> <p>Case called out for hearing on the point of Temporary Injunction O-39 Rule (1)(A) and under section 94(C) of CPC.</p> <p>The present petition is filed on behalf of Defendant No-Baliram Sharma has instituted the present petition against the plaintiff Shivnath Prasad singh for temporary injunction under order 39 Rule-1(A) and under section 94(C) of CPC on dated 23/12/2021 with prayer to grant temporary injunction and restraining the plaintiff from interfering into his peaceful possession over the disputed land having khata no-62, Khesara-597, Rakwa- 2 dhur, From encroaching and any new construction thereon.</p> <p>Rejoinder has been filed by the plaintiff on dated 06/02/2023.</p> <p>Heard the Learned counsel for the parties and perused the record.</p> <p>Perused the plaint , the Petition for Temporary injunction and Affidavit filed in support of application for temporary injunction .</p> <p>Defendant stated that he has filed this petition for getting back possession over the disputed land. Further stated that defendants have bought the disputed land from the Khatiyandar Legal heir of Khata no-62, Khesara-597, Rakwa- 1katha 4Dhur from Harihar Sah through Registered sale-deed on dated 06.06.2005 and there after he came in possession over the land and also got mutation from CO office Narkatiganj and got Jamavandi no 808 and giving rent revenue to Govt. of Bihar.</p> <p>Khesara- 597 of Rakwa- 2 Dhur is the suit land . Defendant also stated in his petition that before filing this suit , plaintiff also initiated the proceeding of 144 of Crpc over the land having Khesara-597 of Rakwa- 1 katha 4 Dhur in which SDO ,</p>	

Narkatiganj has given corroboration of Defendant possession over the disputed land.

In para of his petition defendant stated that plaintiff want to dispossessed the defendant from the suit land and wanted to construct over the suit land of 2 dhur and for that this petition for temporary injunction has been filed.

Plaintiff have Contradicted the aforesaid statement of the defendants and opposed the injunction petition filed by the defendant of dated 23/12/2021 by filling written objection dated 02/06/2023.

The stands taken by plaintiff is that defendant statement in para-1 & 2 of his petition are false and not maintainable also stated that defendant sale deed is false &Void in eye of law and Jamawandi which was issued are also fake and plaintiff has filed this suit over the suit land having Khata no-62 Khesara-597 Rakwa-2 Dhur and Khata-05 , Khesara-599, Rakwa-1 Dhur. Plaintiff also stated in his written objection that Defendant has not given any order from the SDO , Narkatiaganj , Regarding Possession over the suit land of Khata no-62, Khesara-597, Rakwa-2 Dhur.

Plaintiff also stated that disputed land is the purchased land of the plaintiff and stated that no nay new construction was created by the plaintiff over the suit land and other than suit land some part is in possession of plaintiff.

Plaintiff also stated that earlier also on dated 04/01/2019 petition for temporary injunction filed by the defendant was dismissed by the Ld. Court .

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 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.

In Martin Burn Ltd. Vs R.N Banerjee AIR 1958 SCR 514

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.

In Praksh Singh Vs.State Of Haryana, 2002(4) Civil L.J.71-

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 outright. It raises consideration which can be considered on Merit.

The supreme Court in **Shanti kumar Panda Vs. Shakuntala Devi, AIR-2003, SCC –**

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 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.

Is there any Irreparable Injury:- 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.

In Best Sellers Retails India (P) Ltd. Vs. Aditya Nirla Nuvo Ltd.-(2012)6 SCC 792 – 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 party or both.

In Bikash Chandra Deb Vs. Vijaya Minerals Pvt. Ltd 2005 (1) CHN 582 , - The Hon’ble Calcutta high court observed that issue of balance of convenience . The court Shall slender in favour of overview of the concept of balance of convenience , but does not mean and suggest that the balance would be on one side and not in favour of others . there must be proper balance between the parties and balance can not be a one sided affairs.

After the perusal of plaint it is evident that plaintiff ancestor Mangal Mahto bought the land of Khata-62, Khesara-597 Rakwa – 1katha-4 dhur and from khesara 589 Rakwa- 4 dhur from the Mahavir Sah on dated 29.01.1946 and it is also admitted by the plaintiff that due to clerical mistake of Katib instead of Khesara-597 , khesara-594 was enrolled and inside the sale-deed chauhadi were mentioned about the Khesara-597 . there after Jamavandi were also created having jamavandi no-86 in name of Mangal Mahto of total rakwa 1katha-8 dhur was created of Khesara-594.

Defendant in his written statement stated that they bought this

land of khata-62 , Khesara-597, Rakwa-1 Katha-4 Dhur from Harihar Sah the legal heir of Bandhu God and Palak God whose name is recorded in Khatiyani on dated 06.06.2005 through a registered sale- deed and there after he came in peaceful possession over the aforesaid land and also created Jamavandi NO-808 in his name.

In the event of any encroachment and construction of any boundary on the disputed land , presently under occupation of plaintiff ,it is the plaintiff who would stand deprived of his use and occupation of disputed land and not the defendants . the balance of convenience with regard to use and occupation over the disputed land thus lies in favour of plaintiff. In the event of an encroachment or any construction it would be plaintiff who suffer irreparable loss in as much as he would stand deprived of user of the said disputed land.

In the present petition , defendant has not adduced any evidence either in oral or in documentary form with respect that there is any encroachment or any new construction created by the plaintiff on the disputed land and presently suit is on stage of defendant evidence and earlier also on dated 04/01/2019 temporary injunction petition was dismissed by the Ld. Munsif Court.

In the light of the observation made in the preceding paragraph ,and with reference to aforesaid discussed case law , the defendant has failed to establishing in his favour a clear prima facie case, Balance of convenience , and irreparable injury necessary for grant of Temporary injunction against plaintiff . The temporary injunction petition dated 23/12/2021 is therefore dismissed. Put up on dated- 12/10/2023 for defendant evidence.

**MUNSIF
NARKATIAGANJ**