

**IN THE COURT OF SRI SANJEEV KUMAR, MUNSIF,**  
**NARKATIAGANJ, WEST CHAMPARAN**  
**EXECUTION CASE NO-08/2019**

SHIVAJI ARYA.....Decree Holder

Vs

BRIJKISHORE PRASAD.....Judgement Debtor

DATE	ORDER	REMARKS
19.11.2024	<p>Parties are present. Record is Put up for order on petition of the Decree holder (Petitioner) dated 24.07.2024, filed under order 39 R-1 &amp;2 CPC and under section 151 of CPC with prayer to restrain the Judgment Debtor by an order of Temporary Injunction from making any new construction over the suit land or changing the nature of the suit land. Rejoinder / Show-cause to this petition has been filed by Judgment Debtor on dated 29.07.2024</p> <p>Heard the Learned counsel for Both parties and perused the record.</p> <p><b>Case in Brief :-</b> it has been submitted by the Ld. Counsel for the Decree holder that this Execution suit has been filed in this court in Order to Execute the Decree of the court in Eviction suit No-88/2013.</p> <p>In Eviction case no-88/2013 this Learned court was pleased to passed Judgement and Decree in favour of the (Plaintiff) the decree holder vide Judgement dated 28.01.2019 and Decree dated 06-02-2019 with the order that defendant must handed over the possession to the decree holder as also due rent to the plaintiff (Decree-holder) with in period of 60 days from date of Decree. But Judgement Debtor has failed to Comply the order of this court and Hence the Execution Petition is being Filed.</p> <p>Defendant (Judgement Debtor) stated in his show-cause that in Eviction suit no-88/2013 Defendant Filed his written statement on dated 10-03-2014 and Defendant were also did proper pairavi in Eviction suit no-88/2013 till dated 02-07-2014 and later on Defendant filed his Pairavi Through his Advocate Clerk namely Chintamani Tiwari and later in year 2014 namely Abhash Kumar son of the Judgement</p>	

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<p><b>Continue... 19.11.2024</b></p>	<p>Debtor was Diagnosed with Cancer and he went for treatment of his son to various cities and during this period pairavi were given by the Ld Advocate Clerk.</p> <p>Later on Defendant came to know that in Eviction suit no-88/2013 Judgement and Decree were pronounced in favor of the plaintiff in absence of the Defendant.</p> <p>Later on Judgement Debtor after taking Certified copy of the Judgement, he filed Misc. Petition no-27/2019 in the Munsif Court.</p> <p><b>Submission &amp; Prayer of the Petitioner :-</b> it has been submitted by the Ld. Counsel for the petitioner (Decree Holder) that In Eviction Suit no-88/2013 Judgement and Decree has been pronounced in favor of plaintiff wide dated 28.01.2019 and 06.02.2019 and for Execution of that Decree this suit has been filed by the Decree holder in this court. It is further submitted that in this case Judgement Debtor Filed his show-cause and in mean time judgement Debtor also started New construction over the Decreed suit land on dated 21.07.2024 and upon objection by the Decree holder, Judgment Debtor started abusing Decree holder and also ready to assault him. Then decree holder went to nearest police station Mainatar and after Police came and stoped the New construction. But when police went then again Judgement Debtor started new construction over Decreed land. Decreed holder also complained to the concerned SP Bettiah regarding the disturbed situation created by the Judgement Debtor. It is further stated by the petitioner that Judgment Debtor is ready for new construction over the Decreed land in order to change the nature of the suit. So, the Decreed filed this Temporary Injunction petition in order to Restrained the Judgment Debtor from changing the nature of the Decreed land.</p>
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<p>Continue... 19.11.2024</p>	<p style="text-align: center;"><b>Reply of Judgment Debtor :-</b> The Ld. Counsel for the Judgment Debtor has ardently oppose the aforesaid prayer and submitted that none of the elements required for granting injunction are present in favour of the Decree holder for getting the order of Temporary Injunction. Further stated that Judgment Debtor has filed his written statement in original suit and in his para-4 of it stated that suit land and house over it is the ancestral property and over it Defendants were living since long time and over the suit land plaintiff have no any right, title and also stated that there is no any land-lord and tennat relationship has been established between plaintiff and Defendant. It is further stated that in original suit plaintiff has filed his case for Eviction case no-88/2013 for recovery of possession and in the present petition, petitioner has stated that over the vacant land, Judgement Debtor has started new construction. it is further stated that no any description of the suit land is given in present petition regarding Khata no, khesara no and Rakwa and also Boundary of the suit land.</p> <p style="text-align: center;">In this situation petitioner petition is not maintainable and liable to be dismissed.</p> <p><b>Report of local Inspection :-</b> It is pertinent to mention that on the prayer of the Decree holder, a Pleader commissioner was appointed to report about the present position of the suit land. As per report dated 03-09-2024 advocate commissioner submitted that he has informed to both parties the ld counsel and on dated 11/08/2024 he went over the suit land along with both Ld Counsel ,about 3:00PM and asked for help regarding Inspection from both parties. During Inspection one party Judgment Debtor stopped other one from going over the suit land and due to which quarrel started between them. in that situation</p>	
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<p>Continue... 19.11.2024</p>	<p>he is not able to inspect the suit land and he postponed the local inspection.</p> <p style="text-align: center;">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:-</p> <ol style="list-style-type: none"> <li>1. Prima Facie Case.</li> <li>2. Irreparable Injury.</li> <li>3. Balance of Convenience.</li> <li>4. Other Factor.</li> </ol> <p>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 favor.</p> <p><b>Prima facie case:-</b> To make out a prima facie case for temporary Injunction it is not required that the plaintiff should established his Title but it is enough if he can show that he has fair question to raise as to Existence of the Right alleged ( <b>AIR 1950, P527</b>).</p> <p style="text-align: center;"><b><u>In Martin Burn Ltd. Vs R.N Banerjee AIR 1958 SCR 514</u></b></p> <p>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</p>
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<p>Continue... 19.11.2024</p>	<p>not entitled for the relief of Injunction and further point of balance of convenience, irreparable injury need not be considered in such case.</p> <p style="text-align: center;"><b><u>In Praksh Singh Vs. State Of Haryana, 2002(4) Civil L.J.71-</u></b></p> <p>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.</p> <p style="text-align: center;"><b><u>The supreme Court in Shanti kumar Panda Vs. Shakuntala Devi, AIR-2003, SCC –</u></b></p> <p>‘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.</p> <p>This is suit for Execution of Decree dated 06/02/2019 given in Eviction case no-88/2013 in favor of the Plaintiff(decree holder) having khata no-239, khesara-662, Rakwa-0-0-8 (Dhur). In the Eviction Suit no-88/2013 this Learned court was pleased to pass judgement and Decree in favour of the (plaintiff ) the decree holder vide Judgement dated 28/01/2019 and Decreed dated 06/02/2019 with the order that Defendant Must handed over the possession to the decree holder as also due rent to plaintiff with in period of 60 days. from the material available on records, it appears that there is bonafide contention between the parties and plaintiff (Decree Holder) have a prima facie case to go to for Execution.</p>	
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<p>Continue... 19.11.2024</p>	<p>In the event of any encroachment or any construction over the disputed land, Presently the suit land has been Decreed by the court in favour of the plaintiff (Decree Holder) and for Execution of that decree this suit has been filed by the Decree holder and it is Decree holder who would stand deprived of his use and occupation of Decreed land and not the Judgment Debtor.</p> <p style="text-align: center;"><b>Balance of Convenience</b> means the comparative mischief or inconvenience to the parties.</p> <p>In the case of <b><u>A. subramanian vs. R. Pannerselvam, (2021)3 SCC 675</u></b>, It is observed by this court that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary right of ownership has a perfectly good title against all the world but the rightful owner.</p> <p>In the present case it is Clear that in Eviction suit no-88/2013, Judgment and Decree has been given in favour of the Petitioner and he has filed this Execution suit for Execute the Decree dated 06.02.2019 and Judgment debtor were directed to hand over the suit land to decree holder but they did not comply the Judgment of the court. So here it is the petitioner in whose favor balance of convenience lies and not the Judgment Debtor.</p> <p>The balance of convenience with regard to use and occupation over the disputed land thus lies in favour of Petitioner (Decree Holder) . In the event of any encroachment or any new construction over the suit land of Khata-239, Khesara-662 and Rakwa-0-0-8. it would be Decree Holder (Petitioner) who suffer irreparable loss in as much as he would stand deprived of user of the said disputed land.  <b>Irreparable loss-</b> As held by the apex court in <b>(1983)4 SCC 625, AIR 1982 SC 1272</b> “The expression</p>	
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<p><b>Continue... 19.11.2024</b></p>	<p>irreparable injury however does not mean that there should be no possibility of repairing the Injury. it only means that the injury must be material one that is which cannot be adequately compensated by damages.” In the instant case, Decree has already been given in favor of the petitioner (Decree Holder) in Eviction suit no-88/2013 and for Execution of that decree this suit has been filed by the decree holder and it would be Decree Holder (Petitioner) who suffer irreparable loss in as much as he would stand deprived of user of the said disputed land.</p> <p>In the present case after perusal of petition of the petitioner and Show-cause of the Judgment Debtor it is admitted that in Eviction suit No-88/2013 court has granted Decree dated 06-02-2019 in favor of the petitioner (Decree Holder) and directed judgment Debtor to hand over the possession of the suit land to the decree holder but Judgment Debtor Did not comply the order of the court and then decree holder filed this Execution suit no-08/2019 for Execute decree of the court. In mean time During pendency of the Execution suit, Judgment Debtor also tried to Demolish the suit land, for that petitioner had also filed an FIR in Mainatand PS CASE no-34/2019 under section 323/427/385/188/504 IPC against judgment Debtor and certified copy of that FIR has been also Given by the petitioner which is on Record and during Local Inspection Judgment Debtor has also not supported and started quarrel with petitioner at the suit land. Petitioner has also filed some photograph of the suit land in which its shown that over the suit land some material like Bricks and Sand were dumped and some newly constriction were also going over the suit land, which may further complicate the matter in hand.</p>
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<p><b>Continue... 19.11.2024</b></p>	<p>Considering the above discussion, facts and circumstances of the case as well as stage of this case, it appears proper that the suit property be left intact that is without any disturbance by both parties till the further order of this court.</p> <p>The Hon'ble patna High court in <b>2001(2)PLJR 268 [Dharan nath Ojha &amp; others Vs. Raghunath Ojha]</b> held that "if a lis has been admitted for adjudication then it becomes the duty of the court to preserve the subject matter of litigation by an appropriate order so that the same be available at the time of the final adjudication and decree does not become a barren one". the said judgment has been followed in <b>Sri Gopinath Kashyap &amp; anr. Vs. Swarika Pd. Kashyap &amp; Anr. Decided by the single bench on march 9 2011 in Misc.APPEAL No-173 OF 2010.</b> Any attempt to change the physical feature of the suit land will generate occasion for Multiplicity of proceeding.</p> <p>In the light of the observation made in the preceding paragraph and after due perusal of the petition and show-cause and Certified copy judgment and Decree dated 28/01/2019 &amp; 06/02/2019 respectively and photograph submitted by the petitioner of the suit land and with reference to aforesaid discussed case law by the Hon'ble supreme court ,The Petitioner (Decree holder) has been able to established in his favor a clear prima facie case, Balance of convenience, and irreparable injury necessary for grant of Temporary injunction against Judgment Debtor. Accordingly, The temporary injunction petition dated 24/07/2024 filed by the petitioner under order 39 Rule 1 &amp; 2 and under section 151 CPC is hereby Allowed.</p>	
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