

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AT UNA**

Regular Civil Suit No. 119 of 2022

Nagajanbhai Hamirbhai Nandwana

Age: 62 Years, Occupation: Agriculture & Business,

Residing at: Bhadiyadar, Taluka Una,

Currently at: Mumbai.

...Plaintiff

Versus

Virabhai Hamirbhai Nandwana

Age: 67 Years, Occupation: Agriculture,

Residing at: Bhadiyadar, Taluka Una,

District: Gir Somnath.

...Defendant

Appearance:

For the Plaintiff : Mr. D.D VALA Learned Advocate

For the Defendant : Mr. B.B SOLANKI Learned Advocate

Order Below Application exhibit -5 under Order 39 Rule 1 & 2 r/w

Section 151 CPC

Regular Civil Suit No. 119 of 2022

1. FACTS OF TEMPORARY INJUNCTION APPLICATION

Plaintiff has filed a suit for partition and permanent injunction in respect of agricultural lands bearing Revenue Survey No. 3/1 admeasuring Hectare 0-05-06 and Revenue Survey No. 5/1 admeasuring Hectare 0-90-94 situated at Village Bhadiyadar, Taluka Una. Along with the suit, the plaintiff has preferred an application under Order 39 Rule 1 and 2 read with Section 151 and 94 of the Code of Civil Procedure seeking temporary injunction till final disposal of the suit. The plaintiff contends that the suit lands are ancestral and jointly owned properties. According to him, after relinquishment by other co-sharers, he holds 8/9th share in the suit property and the defendant holds 1/9th share. He claims joint ownership and joint possession. The plaintiff asserts that he is ready to give the defendant his lawful share and even proportionate income until partition. However, he alleges that the defendant is trying to interfere with his co-ownership and is attempting to take illegal possession of the entire land by force. It is further alleged that on 12/05/2022 the defendant obstructed and threatened him, thereby giving rise to cause of action. The plaintiff states that unless restrained, he will suffer irreparable loss and the balance of convenience lies in his favour.

The defendant has opposed the application by filing written statement and objections. He denies the plaintiff's claim of 8/9th share and joint possession. According to the defendant, the plaintiff has been residing in Mumbai for the last 30 years and has no concern with the

cultivation of the suit land. It is contended that during their father's lifetime, family partition was effected and the suit land was allotted to the defendant. The defendant claims exclusive possession and cultivation for more than three decades and states that standing crops are raised by him. He further contends that earlier Regular Civil Suit No. 102/2011 filed by the plaintiff was dismissed and therefore the present suit is barred by res judicata. The defendant also alleges suppression of material facts, absence of cause of action, and lack of prima facie case.

Thus, the dispute in the present injunction application centers around rival claims of ownership and possession over the ancestral agricultural land, the validity of alleged family partition and revenue entries, and whether the plaintiff has established prima facie case, balance of convenience, and irreparable injury so as to entitle him to temporary injunction pending final adjudication of the suit.

2.WRITTEN ARGUMENTS OF BOTH SIDES

In the present application for temporary injunction, both parties have advanced elaborate submissions regarding ownership, possession, and entitlement to interim protection over the suit agricultural lands situated at Village Bhadiyadar, Taluka Una.

The learned advocate for the plaintiff has submitted that the suit lands are ancestral properties and are jointly owned by the parties. It is argued that after relinquishment of shares by other co-sharers, the plaintiff holds 8/9th share while the defendant holds 1/9th share. The

revenue records, according to the plaintiff, reflect joint names and therefore prima facie establish joint ownership and joint possession. It is further submitted that in the case of co-ownership, possession of one co-owner is deemed possession on behalf of all unless partition by metes and bounds is proved. The plaintiff contends that no lawful registered partition deed exists showing exclusive allotment in favour of the defendant. It is argued that the defendant is attempting to interfere with the plaintiff's lawful co-possession and is trying to usurp the entire land by force. The plaintiff asserts that unless restrained, he will suffer irreparable loss, and the balance of convenience lies in his favour as injunction would merely preserve status quo.

On the other hand, the learned advocate for the defendant has strongly opposed the application. It is contended that the plaintiff has been residing in Mumbai for the last 30 years and has never cultivated or possessed the suit land. According to the defendant, during the lifetime of their father, a family partition was effected and the suit land was allotted exclusively to the defendant. Entry No. 819 in the revenue record is relied upon to show such family arrangement. It is further submitted that the defendant has been in exclusive, continuous and peaceful possession for more than three decades and is presently cultivating the land with standing crops. The defendant argues that mere revenue entries do not confer title or possession and that the plaintiff's claim of 8/9th share is false and fabricated. It is also contended that an earlier suit (Regular Civil Suit No. 102/2011) filed

by the plaintiff was dismissed and therefore the present suit is barred by res judicata. The defendant submits that injunction cannot be granted against a person in settled possession and that the plaintiff has suppressed material facts, including prior litigation and alleged affidavit, and therefore is not entitled to equitable relief.

Thus, the plaintiff relies upon alleged joint ownership, revenue entries, and the presumption of joint possession among co-owners to claim interim protection, whereas the defendant relies upon alleged family partition, long-standing exclusive possession, previous dismissal of suit, and suppression of material facts to resist grant of injunction.

The dispute essentially centers around competing claims of ownership and possession, and the determination of whether the plaintiff has established prima facie case, balance of convenience, and irreparable injury so as to warrant grant of temporary injunction pending final adjudication of the suit.

3.138 I.L.R. PUNJAB AND HARYANA 2022(2)

Vinod S. Bhardwaj, J. SUNDRI DEVI AND OTHERS—Appellant
versus SANTOSH AND OTHERS—Respondent CR No.1294 of
2022 April 11, 2022

Constitution of India, 1950—Art.227—Code of Civil Procedure, 1908
—O.39 Rl.1 and 2—Grant of injunction against co- sharer and co-
owner Petitioner/ Lessee/ Defendants restrained from interfering in

exclusive and cultivating possession of predecessor-in- interest of Respondents/Plaintiffs—Challenged contending injunction could not have been granted against co-sharer and co- owner—Held, Petitioners/ Defendants cannot be permitted to claim denial of right to co-sharer to enter into land especially when such co-sharer is already in possession of land to the extent of his share— Petition Dismissed.

Held that, with due reference to the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner, it is evident from the perusal of para no.18 of the said judgment that “the co-sharer could not prove concurrently before the Courts below of being in exclusive possession of the suit land.” Hence, a definite finding of fact had been recorded before the Court that the co-sharer, who had instituted the proceedings, could not establish his exclusive cultivating possession of the suit land. No such finding of fact is available in the instant case. As a matter of fact, it is not even the case set up by the petitioners that they are in exclusive cultivating possession to the exclusion of other co-sharers of the suit property. No khasra, jamabandi or revenue record has been relied upon by the petitioners to establish their cultivating possession of the land. They have placed sole reliance on a web-portal uploaded by the petitioners on the website of the Haryana State Agriculture Marketing Board namely “meri fasal mera byora” which is not a revenue document to reflect possession. The same, at best, is a self declaration by a person with regard to the crop which he has sown. The same does not in any

manner establish possession or is regarded as a document of possession in law. (Para 6)

Further held that, for the purposes of ascertaining an application for interim injunction, a triple test is required to be satisfied by a person. The requirements of the said triple test are: (i) a prima facie case, (ii) balance of convenience and (iii) irreparable loss and injury. (Para 11)

Further held that, the petitioners-defendants having failed to establish their sole, exclusive and cultivating possession over the suit land and the respondents-plaintiffs having been able to show documents to establish their prima facie possession coupled with balance of convenience and an irreparable loss and injury caused to them on account of not being permitted to enjoy their holdings, denial of any such interim injunction is likely to deprive the respondent- plaintiffs of their use, occupation and enjoyment of the property. (Para 12)

Further held that, the acknowledgment of the possession of the respondents-plaintiffs by the petitioners through their own earlier documents estops them from pleading to the contrary. Possession being a question of fact and the plaintiffs being able to demonstrate their possession, the defendants cannot be permitted to claim denial of right to the co-sharer to enter into the land especially when such co-sharer is already in possession of land to the extent of his share. The principles governing the grant of temporary injunction are well settled by various judicial pronouncements, to obtain an order of temporary injunction, the applicant must establish:

- (I) A prima facie case;
- (ii) Balance of convenience in his favour; and
- (iii) Irreparable injury likely to be caused if injunction is not granted.

3.1. Prima facie case” not to be confused with “prima facie title”: **Prima facie case** is not to be confused with prima facie title which has to be established on evidence at the trial. Prima facie case is a substantial question raised bona fide which needs investigation and a decision on merits. Satisfaction of court that there is a prima facie case by itself is not sufficient to grant injunction. .

3.2 Irreparable injury: Prima facie case alone is not sufficient for grant of injunction. The court has to further satisfy that non-interference by court would result into irreparable injury to the party seeking relief and that there is no other remedy available to the party except the one to grant injunction and he needs protection from the consequences of the apprehended injury or dispossession. “Irreparable injury” however does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be material one, namely one that cannot be adequately compensated by way of damages or money

3.3 Balance of convenience: The third condition is that the balance of convenience must be in favour of grant of interim injunction. The court while granting or refusing to grant

injunction should exercise sound judicial discretion to find the amount of substantial mischief of injury which is likely to be caused to the parties if the injunction is refused and compare it with that what is likely to be caused to the other side if the injunction is granted. If onweighing competing possibilities or probabilities of likelihood of injury, the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued.

4.FINDINGS ON ISSUES

4.1 Issue No. 1

Whether the plaintiff has established a prima facie case in respect of the suit property?

Finding: In the Negative.

The plaintiff has failed to establish a clear prima facie right or possession over the suit property. The alleged revenue entries and relinquishment are seriously disputed. The defendant has asserted long-standing possession and cultivation. At this interlocutory stage, no strong prima facie case is made out in favour of the plaintiff.

4.2 Issue No. 2

Whether the balance of convenience lies in favour of the plaintiff for grant of temporary injunction?

Finding: In the Negative.

The material on record indicates that the defendant is in settled possession and cultivating the land. Granting injunction would disturb the existing state of affairs and cause greater hardship to the defendant. Therefore, the balance of convenience does not lie in favour of the plaintiff.

4.3 Issue No. 3

Whether the plaintiff would suffer irreparable loss or injury if the temporary injunction as prayed for is not granted?

Finding: In the Negative.

The plaintiff has not demonstrated any irreparable injury. In the event of success in the main suit, appropriate relief including partition and consequential benefits can be granted. Hence, no irreparable loss is established.

Accordingly, all three issues are answered in the Negative.

5. DETAILED FINDING

The present application for temporary injunction has been considered in light of the pleadings, documents and rival submissions of both parties. The plaintiff seeks to restrain the defendant from allegedly interfering with his claimed joint ownership and possession over the suit agricultural lands pending adjudication of the partition suit.

It is well settled that grant of temporary injunction is governed by the triple test, namely: (i) existence of a prima facie case, (ii) balance of convenience, and (iii) irreparable loss or injury. This principle has

been reiterated in **Sundri Devi and others v. Santosh and others, 2022(2) I.L.R. Punjab and Haryana 138**, wherein it is held that a party seeking injunction must demonstrate prima facie possession and satisfy all three ingredients. It has further been observed that injunction between co-sharers depends upon proof of possession and cannot be granted merely on assertions.

In the present case, the plaintiff claims 8/9th share in the suit land based on alleged relinquishment and revenue entries. However, the defendant has specifically disputed such entries and asserted that a family arrangement took place during the lifetime of their father, whereby the suit land was allotted exclusively to him. The defendant claims continuous and exclusive cultivation for more than three decades and dependence on the land for livelihood. The plaintiff admittedly resides in Mumbai for a long period and has not produced cogent documentary material such as recent revenue record, khasra entries or proof of cultivation to establish actual possession. The earlier dismissal of Regular Civil Suit No. 102/2011 also raises substantial issues which require full trial.

At this interlocutory stage, the Court is not required to determine title finally, but the applicant must show a strong prima facie right requiring immediate protection. The material on record reveals serious disputes regarding share, possession and alleged family partition. The plaintiff has failed to establish clear prima facie possession.

As regards balance of convenience, the defendant appears to be in settled possession and cultivating the land. Grant of injunction would disturb the existing state of affairs and agricultural operations. Greater hardship would be caused to the defendant if restrained at this stage.

With respect to irreparable injury, the plaintiff has not demonstrated that denial of injunction would cause injury incapable of compensation. In the event of success in the suit, his share can be determined and appropriate relief including partition and mesne profits can be granted. Considering the overall facts, the disputed nature of revenue entries, absence of clear proof of plaintiff's possession, defendant's claim of long-standing cultivation, and applying the triple test laid down in **Sundri Devi and others v. Santosh and others (2022(2) I.L.R. Punjab and Haryana 138)**, this Court is of the opinion that the plaintiff has failed to satisfy the essential requirements for grant of temporary injunction.

FINAL ORDER

Accordingly, the application under Order 39 Rule 1 & 2 CPC stands **rejected**. No order as to costs.

Pronounced in open Court on this 26th day of February, 2026.

(J. K. Khant)

Principal Senior Civil Judge

Una

Judge Code: **GJ01086**

