

Case called out.
For Orders kept by.

ORDER ON I.A.NO.III

The petitioner has filed this I.A. No. III U/O XXXIX Rule 1 AND 2 OF CPC seeking for restrain the respondents from not to alienate, mortgage or create any kind of charge over the properties bearing Sy. No. 41/3Aa, 4/2Aa, 52/A, 52/5 which are suit properties in OS No. 215/2014, the petitioner has got her share in these properties as per the decree of the court, hence gran the interim injunction against the defendants/respondents until the disposal of the petition. The respondents have not raised any objection to the present I.A. No. III.

2. Heard both sides arguments, peruse documents available on record.

3. In view of above the following points that would arise for consideration on I.A.No. III is as follows:-

1. Whether, at this stage the petitioner has made out a prima-facie case lies in her favour?

2. Whether the petitioner prove the balance of convenience lies in her favour?

3. Whether the petitioner prove that in event of not allowing I.A.No.III, he will be put to irreparable loss and injury?

4. What Order?

4. Answers to the above points is as follows:-

Point No.1:In the affirmative.

Point No.2:In the affirmative.

Point No.3:In the affirmative.

Point No.4:As per final order for the following:-

REASONS

5. **Point No.1 to 3:-** Since these points are inter alia, hence they are taken together for common discussion. This is petition filed by the petitioner for the partition and separate possession as per section 54 of CPC. It is well settled principles of law that, in order to decide the application filed under order XXXIX Rules 1 & 2 of CPC, the basic principles that are to be considered are prima-facie case, balance of convenience and irreparable loss shall be taken into consideration. So far as the prima facie case, balance of convenience and irreparable loss are concerned, it is admitted facts that the OS No. 215/2014 was decree and thereafter the the petitioner has prepared the RA No. 01/2020 in which the Hon'ble Appellate court altered the allotted share to the petitioner and respondents. As per the alteration the petitioner and respondent No.1 has for 5/12 the share and allotted 1/12 th share to defendant No. 3 and 4. with an direction to the defendant No.3 and 4 has give the possession of suit properties petitioner within 30 days, at this stage petitioner has established the prima facie case, and there is chances of alienate the suit properties by the respondents, hence there is need of avoid the multiplicity of litigation. Therefore, under these circumstances, if an injunction order granted no harm will be going to cause to the respondents, the balance of convenience tilt in favor of the petitioner. So far as the irreparable loss is concerned, as above said supra the petitioner established prima-facie case and balance convenience in her favour. As per the assertion of the petitioner, definitely at this stage, no irreparable loss will cause rather than the

respondents. Therefore, this court is of opinion that, refusing the injunction order will be going to cause no loss and damage to the respondents rather than the petitioner. Therefore as the petitioner has made out prima-facie case and balance of convenience in her favour, for the above made observation this court is answered the points No.1 to 3 are in the affirmative.

6. Point No.4:- For the foregoing reasons, I proceed to pass the following:

:- O R D E R :-

The I.A. No. III filed U/O XXXIX Rule 1 & 2 of CPC filed by the petitioner dated: 17.06.2025 is hereby allowed. The respondents are here by restrained from not to alienate, mortgage or create any kind of charge over the suit property bearing Sy. No. 41/3Aa, 4/2Aa, 52/A, 52/5 which are suit properties in O.S. No. 215/2014 situated at Gabbur K village in Afalpur taluka until the disposal of the Petition.

No order as to cost.

For Orders on I.A. No. IV and V. Call on 23-02-2026.

Civil Judge & JMFC,

Afzalpur