

**Order dated 30.05.2023**

CS-430-2022

CNR No.PBMNA00005702022

Present: Sh. Kirty Sharma, Advocate for applicants/plaintiffs.  
Sh. S.S. Grewal, Advocate for respondents/defendants.

**APPLICATION UNDER ORDER 39 RULES 1 & 2 R/W SECTION  
151 OF CPC FOR GRANT OF TEMPORARY INJUNCTION.**

**ORDER**

This order will dispose of an application under Order 39 Rule 1 and 2 CPC read with Section 151 Cr.P.C filed by the applicant/plaintiff.

2. Brief facts of the case are that applicants/plaintiffs are alleging that an exchange has taken place between the applicants-plaintiffs and respondents/defendants on 22.03.2016. It is further alleged by the applicants-plaintiffs that in the land measuring 64 Kanal 19 Marla he was having 1/6 share and respondents/defendants in land measuring 32 Kanal and Killa No. 28//2 min (4-0) 2 min (4-0), 28//3 (8-0), 8 (8-0) 9 (8-0) had 12/32 share that comes to 12 Kanal and respondents/defendants had second piece of land measuring 29 Kanal 4 Marla of Khasra and Killa No. 136//1 (8-0) 2 (8-0) 3 (8-0) 8/1 (0-4) 17/2 (5-0) having 87/1168 share which comes to 2 Kanal 3.5 Marla. So, applicants-plaintiffs is alleging that when exchange of land took place applicants-plaintiffs have given out of his share 10 Kanal 16.5 Marla to the respondents/defendants and out of the share of the respondents/defendants have taken 14 Kanal 13.5 Marla. Applicants-

applicants-plaintiffs are further alleging that the exchange recorded in the revenue through mutation No.6705 rapt No.282 dated 21.04.2016 is totally false and forged and should be declared as illegal null and void. Applicants-plaintiffs are further stating that after the mutation was entered other co-sharers with the respondents/defendants approached the applicants-plaintiffs and have reported that out of the land first piece of land measuring 32 Kanal other co-sharers are also having right and also appraised the applicants-plaintiffs that the respondents/defendants are having only 1/6 share out of total land of 32 Kanal (i.e. 1/8th share of 32 Kanal is with respondent/defendant No.1 and respondent/defendant No.2 is having only 1/9th share). Applicants-plaintiffs further stated that from the above said facts and circumstances and from the information given by the other co-sharers, applicants-plaintiffs have gained knowledge that in total land measuring 32 Kanal in which respondents/defendants were saying they had 12/32 share is actually having only 1/6 share and are owners of only 5 Kanal and 6 Marla. It is further alleged by the applicants-plaintiffs that respondents/defendants have wrongly mentioned themselves to the owner of 12 Kanal out of 32 Kanal showing them having 12/32 share rather they are having only 1/6 share out of 32 Kanal. It is further alleged that stay should be granted in favour of the applicants-plaintiffs restraining the respondents/defendants not to alienate, mortgage or transfer in any manner the property in hands of the respondents/defendants which they have got from the exchange of land from the applicants/plaintiffs. In order to prove plaintiff has placed on record, jamabandi for the year 2009-10, mutation

No.6705 rapt No.282 dated 21.04.2016. Hence, the present application.

3. In reply to the application under Order 39 Rule 1 & 2 CPC, it is averred that exchange of land has taken place between applicants-plaintiffs and respondents/defendants on 22.03.2016 and now through that exchange the land of the respondents/defendants have been transferred to the applicants-plaintiffs and entry regarding that has also been entered in rapt No. 282, mutation No. 6705 dated 21.04.2016. Now, applicants-plaintiffs are in exclusive possession of land of respondents/defendants through that exchange. Applicants-plaintiffs have no right to further interfere in the land which has been given to the respondents/defendants by the applicants-plaintiffs in the exchange. It is further alleged that the mutation is rightly passed and is not forged and fabricated and as applicants-plaintiffs are enjoying the property of the respondents/defendants. Same right should be enjoyed by the respondents/defendants also. Rest of averments has been denied in general and a prayer for dismissal of the application has been made.

4. Heard. If we go through the pleadings of the applicants/plaintiffs as well as the documents submitted by the applicants/plaintiffs, in order to get the relief of declaration as well as permanent injunction, the applicants/plaintiffs have to prove that the following factors existing in his favour as has been observed by the Hon'ble Supreme Court in case titled as ***Kishor Singh Ratan Singh Jadeja Vs. Maruti Corporation (2009) 11 SCC 2029 (238): AIR 2009 SC 2882***, wherein it has been held that:

*“ it is well established that while passing an interim order of injunction under Order 39 rule 1 of the Code, the Court is required to consider three basic principles namely:*

*(i) Prima facie case;*

*(ii) Balance of convenience;*

*(iii) Irreparable loss or injury*

5. Heard. If we go through the application of the applicant/plaintiff as well as the documents placed on record, it is admitted between the parties that exchange has taken place between them. Although applicants-plaintiffs are alleging that after mutation was entered in the revenue records he came to know from other co-sharers who approached the applicants-plaintiffs that in the suit property measuring 32 Kanal respondents/defendants were not the sole owners. Further, applicants-plaintiffs are alleging that respondents/defendants misrepresented their share by stating that they have 12/32 share out of 32 Kanal which comes to be 12 Kanal but in actual through other co-sharers he came to know that respondents/defendants were having only 1/6 share of 32 Kanal which comes to be 5 Kanal 6 Marla. Applicants-plaintiffs have further pleaded that to restrain the respondents/defendants not to further alienate the suit property in hand of the respondents/defendants and to declare the mutation as illegal and null. This court is of the considered view that applicants-plaintiffs have not mentioned on record that who are the other co-sharers what are their names and to what extent

they were having share in the disputed property of 32 Kanal. Applicants-plaintiffs have also failed to mention that in Jamabandi which entries have been wrongly entered. If we go through the total pleadings of the applicants-plaintiffs, applicants-plaintiffs through exchange has taken possession of land of defendants and it is 6 years now till today the applicants-plaintiffs are in exclusive possession of respondents/defendants land and is also enjoying the benefits of the land. But through present suit he is trying to restrain the respondents/defendants to sell the land which has come to the respondents/defendants through exchange deed. But prima facie there is nothing on record to show that how respondents/defendants were not the owners of disputed land of 32 Kanal and who are the other co-sharers who are owners of disputed suit property. It is matter of evidence to be proved by the applicants-plaintiffs that how wrong mutation has been entered, how the present respondents/defendants have cheated the applicants-plaintiffs and how the present respondents/defendants are not owner of the suit property measuring 32 Kanal. To my view, at this stage, no prima facie case is made out in favour of the applicants /plaintiffs. Further, at this stage, balance of convenience does not tilt in favour of the applicants/plaintiffs. Therefore, no irreparable loss shall be caused to the applicants/ plaintiffs if injunction is not granted at this stage.

6. Accordingly, in the interest of justice, the stay application in hand stands dismissed with the above observations. The observations of mine made herein, while disposing this application will have no effect on

merit of the case at all.

7. However, this stay order shall not be applicable if, any proceedings under SARFEAST Act or other relevant act has been initiated against the property of plaintiff by any bank, NBFC etc, or any Government Authority and Municipal Council, Gram Panchayat or any other Authority.

Pronounced In Open Court:

30.05.2023

(*Shelly*)

*Directly Dictated*

(Jasika Vij) **PB0664**  
Civil Judge (Junior Division)  
Budhlada.

Present: Sh. Kirty Sharma, Advocate for plaintiffs.  
Sh. S.S. Grewal, Advocate for defendants.

Arguments heard. Vide my separate detailed order of even date, the application under Order 39 Rule 1 & 2 r/w Section 151 of CPC, stands dismissed. From the pleadings of the parties following issues have been framed:-

1. Whether the plaintiffs are entitled for joint possession as prayed for?OPP
2. Whether the plaintiffs are entitled for declaration as prayed for?OPP
3. Whether the plaintiffs are entitled for permanent injunction as prayed for ?. OPP
4. Whether the suit of the plaintiffs are not maintainable?OPD
5. Whether the plaintiffs have not come to the court with clean hands and he has concealed the material facts from the court? OPD
6. Relief.

No other issue pressed, claimed or arises. For evidence of plaintiff, to come upon 04.08.2023. List of witnesses, documents and PF/DM, if any be filed within 10 days from today, failing which the plaintiff shall lead his evidence at his own responsibility.

Pronounced In Open Court:

30.05.2023

(Shelly)

*Directly Dictated*

(Jasika Vij) **PB0664**

Civil Judge (Junior Division)  
Budhlada.