

Court of Ruchi Dayal, Civil Judge Sr. Div. VII, Ranchi.

M.C.A No. 835/2022

JHRN02-002742-2022

O.S No.- 01 of 2020

Schedule XLII-High Court (J) 9a [Old (M) 164.]

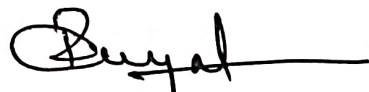
Serial No.	Date of order of proceeding	Order with the signature of the Court	Office action taken with date
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	03.07.2023	Bipin Munda & others. Plaintiffs/petitioners. Versus Chamo Munda & others. Defendants/O.Ps. <u>Order</u> Today case is fixed for order on the injunction petition of plaintiff dated 04.11.2022 under Order XXXIX Rule 1 and 2 read with 151 of CPC for injunction. Defendants did not appear in the original suit also substituted defendants did not appear in original suit. Learned counsel for the plaintiffs had filed the present injunction petition dated 04.11.2022 on behalf of the plaintiffs. Through this petition the plaintiffs have prayed that this instant suit has been filed for partition of joint property. The full facts of the case have been stated in the plaint which may be treated as a part of this petition. From the perusal of the plaint it comes to the knowledge that the present suit has been filed by the plaintiff for partition. The plaintiff father Goverdhan	

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	Cont..... 03.07.2023	Munda was <i>Ghar Damad</i> of Chamu Munda. That Chamu Munda died in 1975 leaving behind his <i>Ghar Damad</i> and his daughter Lichi Mundian and younger daughter Agni Mundian who died. All the funeral ceremony expenses etc. were done by <i>Ghar Damad</i> Goverdhan Munda and the plaintiff of this case. As has been mentioned earlier that defendants have not appeared in the original suit and original suit is running ex-parte against them Learned lawyer of the plaintiff has already completed the argument in which he reiterated the contents of injunction petition in his arguments. The plaintiff has claimed the relief of preliminary decree for partition to the extend of half share of plaintiff in the suit property described in schedule A of the plaint and a survey knowing Pleader Commissioner be appointed for carving out a separate <i>Takta</i> for the plaintiff and the plaintiff be put in <i>Khas Possession</i> thereof. The plaintiff further state that the suit property is joint property of both the parties and is still being enjoyed jointly by the parties to the suit. The half share of the plaintiff over the suit property being legal heir of the recorded Raiyat Chamu Munda (Maternal Grand Father) and the father of the plaintiff being <i>Ghar Damad</i> which is excepted in Munda Customary law. It is further stated that maternal grand			

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	Cont..... 03.07.2023	the balance of convenience also lies in the favour of the plaintiff for the grant of an injunction order against the substituted Defendant No. (1) and (1) (a) from taking possession of the suit property on the basis of the sada sale deed. That if the defendants are not restrained by issuance of appropriate injunction and the plaintiff get dispossess from the suit land for the half share of the property as mentioned in the column no (17) of the R.S. Khatiyani and the plaintiff would become in fructuous which would be highly injurious to the plaintiffs. At this juncture court is not inclined to go into the question of title and ownership as the same shall be decided on merit by adducing evidence for the same by the plaintiff. Further it is trite in law that no one can claim title over any land on the basis of sada sale deed. Further compliance of Section 46 C.N.T. Act. is mandatory and no one can claim any title without permission of D.C. for any triable land. The alleged transfer of land to Murli Prasad by defendants is clouded with too many defects. All of this shall be decided during trial of the original suit. Therefore, this petition for ex-parte temporary injunction is to be decided in light of the indispensable requisites as laid down in Order 39 Rule 1 and 2 and through the various judgements of the Hon'ble Supreme Court on the same point.

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	Cont..... 03.07.2023	For getting an order of temporary injunction in once favour a party to the civil suit is required to prove the following points - 1. A prima facie case 2. Balance of convenience 3. Irreparable loss and injury 4. The threat on the part of plaintiff/defendant, as the case may be, to dispossess the petitioner for the suit land. From perusal of the petition it is very much clear that the plaintiff has only pleaded that he has a prima facie case and balance of convenience in his faovour and if the order of injunction is not passed in his faovur he would suffer irreparable loss and injury and he also claims to be under threat of change of topography by the proposed construction work of the defendants. But apart from it, the plaintiff has proved nothing. How there is prima facie case and balance of convenience in his favour and whey the injury caused by the alleged dispossession could not be compensated through money, that remains unanswered. Moreover, prima facie case, balance of convenience and irreparable loss could not be proved either by the contents of injunction petition or through argument of learned counsel of plaintiff. Since the impugned sale deed is not duly registered as has also been admitted by petitioners/plaintiffs. It genrates no presumption in	

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