

**IN THE COURT OF THE SENIOR CIVIL JUDGE, PURI**

*Present:* -Shri Soumyarup Sahu, LL.B.,  
Civil Judge (Senior Division), Puri  
(JO Code- OD00485)

*Dated, this the 2<sup>nd</sup> September, 2025*

**I.A. No. 202/2024**

**(Arising out of C.S.639/2024)**

Bhajamana Pradhan, aged 65 years, S/o- Late  
Kelucharan Pradhan, resident of Village- Andalsingh,  
P.O- Jagannath Pur, P.S- Kanas, Dist-  
Puri.....Plaintiff.

Versus

1. Abhimanyu Pradhan, aged about- 36 years,
2. Babrubahana Pradhan, aged about- 31 years, 5/o-  
Bhajamana pradhan  
Sl. No- 1 & 2 are resident of village- Andal singh, P.O-  
Jagannath Pur, P.s- Kanas, Dist- Puri.
3. Nirupama Bisoi, aged about - 34 years, W/o- Biswanath  
Bisoi, D/o- Bhajamana Pradhan, resident of village-  
Hatabazar, P.O/P.S- Jatni, Dist- Khorda,
4. Sakuntala Mohapatra, aged about- 43 years, W/o-  
Benudhar Mohapatra, of Village- Andalsingh, P.O-  
Jagannath Pur, P.S- Kanas, Dist-Puri       Opposite  
Parties

Counsel for the Petitioner: Sri Anil Kumar Ray

For the Opp Party No. 1 to 3 : Shri Karunakar Bisoi

For the Opposite Party No.4: Shri Manoj Kumar Mohapatra

Date of Argument: 22.08.2025

Date of Order: 02.09.2025

## **ORDER**

1. This record is posted today for order on the petition filed U/o-39, Rules-1 and 2 of CPC to pass an interim- injunction restraining the opposite party No.1 and 2 from alienating the suit scheduled property or create any third party interest in any form , change the nature and character of scheduled 'B' property in any manner and interfere with the possession of plaintiff in any manner. Similarly to direct the opposite party No.4 to alienate or create third party interest in any form and change the nature and character of suit scheduled – 'C' property and interfere in possession

### **SCHEDULE "B" SUIT PROPERTY.**

1) Dist- Puri, Sabik P.S. Satyabadi, Mouza- AndaKing, Stitiban Khata No- 61, Plot No- 525, Area Ac0.41 decimals which corresponds to Hal Mouza Andalsing. Tahasil Kanas, Hal P.S- Kanas, Mutation Khata No- 457/238, Plot No- 525, Area-Ac0.410 decimals.

II) Dist- Puri, P.S. Satyabadi, Mouza- Andalsing, Stitiban Khata No- 61, Plot No-662, Area- Ac0.30 decimals.

III) Dist- Puri, P.S- Satyabadi, Mouza- Andalsing, Stitiban Khata No- 153, Plot No-524, Ac0.20 decimals towards north out of Ac1.42 decimals having boundary as follows.

East- River embankment, West- River, North- Purchasers, South- Vendor.

Which corresponds to Hal P.S- Kanas, Tahasil- Kanas, Mouza- Andalsing, Mutation Khata No-457/178, Plot No-524/2150, Area- Ac0.200 decimals.

### **SCHEDULE -"C" PURCHASED BY DEFENDANT NO-4**

Dist- Puri, P.S- Kanas, Mouza- Andalsing, Stitiban Khata No- 457/535  
Plot No-662, Area Ac0.150 decimals (Sarada-2) towards north out of  
Ac0.300 decimals having boundary

East- Balunki Jena West-Road,North-Dhusasan Pradhan South-  
Vendor.

2. For convenience, the parties are referred to as per their respective status before the trial Court.
3. The suit was filed by the plaintiff for declaration, confirmation of possession, partition declaring the sale deed No. 11562300952 dated 17.01.2023 void and permanent injunction against the defendant/opposite parties. It is pleaded that the petitioner/plaintiff purchased scheduled – ‘B’ property described vide R.S.D No. 1114 dated 22.10.1998 and R.S.D. No. 764 dated 13.10.2000 in the name of his four minor sons namely Abhimanyu Pradhan, Nagarjuna Pradhan, Babrubahana Pradhan, Karnabira Pradhan by paying all consideration money and remained in possession. It is pleaded that his two sons namely Nagarjuna and Karnabira died as bachelor in the year 2006 and 2016 respectively. After death of his two son 50% of their share devolve upon the plaintiff but without having any valid partition and without knowledge of the plaintiff-petitioner, the opposite party No. 1 to 3 alienated "C" Schedule property to opposite party No- 4 vide R.S.D No- 11562300952, dtd. 17.10.2023 who got the said land mutated in his name. It is submitted here that the extent of land recorded in Schedule "B" property is Ac0.91 decimals where petitioner has 50% share and opposite party

No- 1 & 2 have 25% share each over it. It is pleaded that the alleged alienation of Schedule- "C" property by opposite party No- 1 to 3 in favour of opposite party No- 4 is void, ineffective and no binding to petitioner. It is pleaded that on dtd. 09.11.2024 opposite party No 4 having no right, title, interest and possession with the help of some antisocial of the locality trying to proceed with the construction over the Schedule-"C" property by force i.e. changing the nature and character of suit scheduled property. It is also pleaded that opposite party No.4 is trying to alienate the suit scheduled property. Similarly, on dtd. 09.11.2024 opposite party No- 1 & 2 have also threatened the petitioner to alienate Schedule "B" property to outsiders in a through away price as suit land stands recorded in their name even though the petitioner is having 50 % share in property left by his deceased son Nagarjuna and Karnabira. It is pleaded that petitioner has constructed eleven Paccua room which is his only residential house and if the opposite party No. 1 and 2 would alienate the same the petitioner will sustain irreparable loss which cannot be compensated in terms of money. It is further pleaded that petitioner-plaintiff has a prima facie case. Besides that balance of convenience also lies in his favour. Similarly, if the injunction is not granted, the petitioner would sustain irreparable loss and damage which cannot be compensated in terms of money. Hence, this present case.

4. The opposite party No.1 to 3 filed a rejoinder refuting the allegation made by petitioner/plaintiff in the Interim

application. It is pleaded by them that I.A is not maintainable as the petitioner has filed the present application suppressing material facts and only in order to illegally grab suit property. It is pleaded that the opposite party No. 1 to 3 are real owner of suit scheduled property after death of their deceased brother and ROR stands recorded in their name and are in possession of suit scheduled property with the knowledge of plaintiff and other public at large. It is also pleaded that since there is no possession, no injunction should be granted in his favour. It is admitted that the Opp. No. 1,2 and 3 have sold an Area Ac.0.15dec to Opp. No 4 namely Sakuntala Mohapatra for their legal necessity on dt.17.12.2023 vide RSD No. 11562300952 being legal possessors of the suit land and accordingly Tahasildar Kanas after due enquiry allowed mutation in their favour. Hence, they humbly pray before this court to dismiss the interim application.

5. Similarly, the opposite party No.4 also filed a rejoinder refuting the allegation made by petitioner/plaintiff in the Interim application. It is pleaded by him the present petitioner has no locus-standi to file the interim application against the O.P as they have approached the court with unclean hands by suppressing material facts. It is pleaded by them that opposite party No.1 and 2 are absolute owner of suit scheduled property and as such the property is not partible in nature. It is also pleaded that since the petitioner are not in possession of suit scheduled land and hence, their application for injunction is not maintainable. It is further pleaded that the

opposite party No.4 is peaceful possession of suit scheduled property appertaining to Khata No-61 Plot No-662 area ac0.15 decimals out of area ac0.30 decimals after having purchased the same from Abhimanyu Pradhan and Brundaban Pradhan. It is pleaded since the opposite party No.4 is in possession of suit property balance of convenience lies in his favour and if injunction is passed against them then he will suffer irreparable loss. Lastly it is pleaded that the petitioner-plaintiff doesn't qualify any golden principle of rules on injunction and the same may be dismissed with cost.

6. In order to get the relief of temporary injunction under Order 39 Rule 1 and 2 CPC, the petitioner has to satisfy the following ingredients:

- a. That petitioner has got a good prima facie in her favour.
- b. That, balance of convenience lies in favour of the petitioner
- c. That, petitioner will suffer irreparable loss, if her prayer for interim order of injunction is not allowed

7. The petition was heard at length from both the sides. Perused the plaint, the present petition and objection by the O.P No.1 to 3 and O P No.4. I also heard argument from both parties. In the present case, neither party examined any witness in support of their contention.

8. Before proceeding further, it would be relevant to refer to

following judgment of Hon'ble Apex Court in **Ramakant Ambalal Choksi vs Harish Ambalal Choksi 2024 INSC 910** wherein it was observed

### **PRINCIPLES GOVERNING GRANT OF TEMPORARY INJUNCTION**

33. In the case of **Anand Prasad Agarwal v. Tarkeshwar Prasad reported in (2001) 5 SCC 568**, it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

34. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of 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 a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is

likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See: Dalpat Kumar v. Prahlad Singh reported in (1992) 1 SCC 719.)

xx

xxx

45. Quite often, in these types of litigations, it is sought to be argued that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of the provisions of Section 52 of the T. P. Act whereunder all such transfers cannot but abide by the result of the suit. It is true that the doctrine of lis pendens as enunciated in Section 52 of the T. P. Act takes care of all pendente lite transfers; but it may not always be good enough to take fullest care of the plaintiffs interest vis-a-vis such a transfer. We may give one appropriate illustration of a suit for specific performance of contract based on an agreement of sale. In a suit wherein the plaintiff prays for specific performance and if the defendant is not restrained from selling the property to a third party and accordingly a third party purchases the same bona fide for value without any notice of the pending litigation and spends a huge sum for the improvement thereof or for construction thereon, the equity in his favour may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief of specific performance to the plaintiff at the trial and to award damages only in favour of the plaintiff. It must be noted that Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of lis pendens

as enacted in Section 52 of the T. P. Act was regarded to have provided all the panacea against pendente lite transfers, the Legislature would not have provided in Rule 1 for interim! injunction restraining the transfer of suit property. Rule 1 of Order 39, in our view, clearly demonstrates that, notwithstanding the Rule of lis pendens in Section 52 of the T. P. Act, there can be occasion for the grant of injunction restraining pendente lite transfers in a fit and proper case. (See: Sm. Muktakesi Dawn and Ors. v. Haripada Mazumdar and Anr. reported in AIR 1988 Cal 25)

46. In the aforesaid context, we may refer to one old decision of the Calcutta High Court in *Promotha Nath Roy v. Jagannath Kisore Lal Singh Deo* reported in (1912) 17 Cal LJ 427 where it has been observed that a Court will in many cases interfere and preserve property in status quo during the pendency of a suit in which the rights to it are to be decided and though the purchaser pendente lite would not gain title, the Court will prevent by injunction the embarrassment that would be caused to the original purchaser in his suit against the vendor. And it has been ruled there on the authority of Turner, LJ in *Hadley v. London Bank of Scotland*, reported in (1865) 3 De GJ & S 63 at 70 that if there is a clear valid contract for transfer, the Court will not permit the transferor afterwards to transfer the legal estate to third person, although such third person would be affected by lis pendens. Mr. Mukherjee has drawn our attention to Dr. S. C. Banerji's *Tagore Law Lectures on Specific Relief* (2nd Edition, page 592) where the decision in *Promotha Nath* (supra) has been approvingly referred to and also to Fry's *Treatise on Specific Performance* (6th Edition) where the same rule has been enunciated as a general principle on the authority of Turner, L.J., in *Hadley* (supra).

47. Today, all that we say is that having regard to the nature of dispute between the parties and the materials on record, the property should not change hands any further.

9. The Hon'ble Court in **Nayan Kumari Dei v. Bhagabat Sahu and Ors.** 38(1972) C. L. T. 1233 observed "The main object behind the power to grant the preventive temporary relief of injunction is to prevent the ends of justice being defeated. It is granted at the discretion of the Court. This Court has confirmed the clear language of the provisions of Section 36 of the Specific Relief Act, 1963, Section 94(c) and Order 39, Rules 1 and 2, C. P. C., in laying down the principle that the power to grant temporary injunction is discretionary.
10. Keeping in mind above principle, let me find out whether the petitioner/plaintiff is entitled to equitable relief of temporary injunction. It is well settled that plaintiff/petitioner has to satisfy himself that he has raised a bona fide dispute i.e. there is a strong case for trial which needs investigation a decision of merit and on the facts before the court there is a probability of the petitioners being entitled to the relief claimed by them. The existence of prima facie right and infraction of such right is a condition precedent for grant of temporary injunction. The burden is on the petitioner to satisfy the court by leading evidence or otherwise that he has prima facie in their favour. In the present case, it is admitted fact that petitioner is father of opposite party No.1 to 3 and also Late Nagarjuna Pradhan and Karnabira Pradhan. It is also admitted fact that suit property was purchased in the name of opposite party No.1 and 2 along with late Nagarjuna Pradhan and Karnabira Pradhan. The main issue in the present case

pertains to whether opposite party No.1 and 2 became absolute owner or the petitioner has any share in the scheduled suit property (Exhibit B). If opposite party No. 1 and 2 are absolute owner of suit property they have right to dispose the suit property but if the suit property is joint family property Law is settled that all coparceners collectively owned the entire joint property, not having a definite, individual share until partition. At this stage without having benefit of trial, this court cannot come to conclusion whether opposite party no. 1 and 2 are absolute owner of suit property of opposite party No.1 or suit property (Exhibit B) is joint family property. The learned counsel of opposite party No.1 relied upon judgment of Hon'ble High Court of Orissa in case **Harekrushna Mahakud v. Radhananth Mahakud and Ors** wherein Hon'ble Supreme Court observed “ *The transferee acquires the right to enforce partition and allotment of lands which would have fallen to the share of vendor*. However, with due respect to above judgment, without being actual partition by metes and bound, it is difficult to ascertain the actual share which would have fallen to share vendor. Secondly, the learned counsel of opposite party No.4 also relied upon judgment *Jawada Begum (dead) through Lrs v Shami Mahammad (dead) through LRS* AIR 2019 SUPREME COURT 72 “There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. However, with

due respect to above judgment, the validity of sale deed can be decided only during trial after both parties adduce evidences from their respective sides. Secondly, as regard to recording of name of opposite parties in ROR, Law is settled that Revenue Records does not Confer Title and hence, even though ROR stands recorded in the name of opposite party No.1 and 2 in respect of scheduled B Property and in the name of opposite party No.4 in respect of Scheduled C property and hence, it cannot be basis of ownership of suit scheduled property. After going through all the documents produced by both the parties as well hearing argument, I feel that the question so far as title is concerned, can only be decided at the conclusion of the trial and hence, the plaintiff has a prima facie case in his favour.

11. This Court has to now back upon other two ingredients, such as balance of convenience and irreparable loss. As regard to balance of convenience, same does not tilt in favour of either party because the ownership and possession of suit land can only be decided at trial. So far as irreparable injury is concerned, having regard to the nature of dispute between the parties and the materials on record, the property should not change hands any further and if the nature and character of property changes it will be difficult to effectively distribute properties amongst the coparcener. The right of third party (opposite party No.4) to **enforce allotment of land** accrues only after division of property among coparcener by metes and bounds or after the opposite party No.1 and 2 are declared absolute owner of suit scheduled properties and

hence, they cannot be permitted to change the nature and character of suit property. At the stage of interim application there cannot be any assumption or presumption that the suit land purchased by opposite party will surely fall in the share of defendant /opposite party No.1 to 3. Hence, if injunction is not granted mischief or inconvenience likely to arise from withholding injunction would be greater than which is likely to arise from granting it. Hence, it is ordered

### **Order**

In view of facts and circumstances of the present case, the I.A is allowed against defendant/opposite parties on contest but in the circumstance without cost. The defendant/opposite part No.1 to 3 herein shall maintain status quo as regards the Schedule B of suit property as on date and shall not create any further encumbrances over the same in any manner till disposal of the suit. Similarly, the opposite part No.4 shall maintain status quo as regards the Schedule C of suit property as on date and shall not create any further encumbrances over the same in any manner nor change the nature and character of scheduled C suit property till disposal of the suit

Civil Judge (Senior Division), Puri

This order is transcribed to my dictation, corrected by me and pronounced in the open Court on this the 2<sup>nd</sup> September, 2025.

Civil Judge (Senior Division), Puri

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PETITIONER.

None

LIST OF WITNESSES EXAMINED FOR THE OPPOSITE PARTIES.

Nil

LIST OF DOCUMENTS ADMITTED ON BEHALF OF PETITIONER.

None

LIST OF DOCUMENTS ADMITTED FOR THE OPPOSITE PARTIES.

None

Civil Judge (Senior Division), Puri



