

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.838 of 2018**

Smt. Malti Devi Wife of Sri Narain Sharma @ Sri Narain Singh, Resident of Village- Korji, P.O.- Mohammadpur, P.S.- Phulwari Sharif, District- Patna, at present Mohalla- Mainpura, behind Kahar Toli, P.S.- Patliputra, District- Patna, Pin Code- 800013.

... .. Petitioner/s

Versus

1. Sri Jagdish Sharma @ Jagdish Singh Son of Late Ram Naresh Sharma, Resident of Village- Korji, P.O.- Mohammadpur, P.S.- Phulwari Sharif, District- Patna, at present village- Abu-Lodipur, P.O.- Sorangpur, P.S.- Janipur, District- Patna, Pin- 801505.
2. Sri Awadh Nandan Kumar, Son of Late Brij Kishore Sharma @ Brij Kishore Singh Resident of Village- Korji, P.O.- Mohammadpur, P.S.- Phulwari Sharif, District- Patna, Pin- 801105.
3. Suresh Nandan Kumar, Son of Late Brij Kishore Sharma @ Brij Kishore Singh, Resident of Village- Korji, P.O.- Mohammadpur, P.S.- Phulwari Sharif, District- Patna, Pin- 801105.
4. Sri Narain Sharma @ Sri Narain Singh, Son of Late Prem Nath Singh, Resident of Village- Korji, P.O.- Mohammadpur, P.S.- Phulwari Sharif, District- Patna, at present Mohalla- Mainpura, behind Kahar Toli, P.S.- Patliputra, District- Patna, PIN Code- 800013.
5. Mithlesh Sharma, S/o Late Ram Naresh Singh R/o Village- Kurji, P.S.- Phulwarisarif, District.- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dronacharya, Sr. Advocate Mr. Vijay Bardhan Pandey, Advocate
For the Respondent/s	:	Mr. Jitendra Kumar Bharti, Advocate Mr. Uday Prasad, Advocate Mr. Suman Thakur, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 05-07-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous application is filed against the order dated 17.08.2017 passed by learned Additional District Judge – 10, Patna in Miscellaneous Appeal No. 26 of 2016



confirming the order dated 16.03.2016 passed by the learned Sub-Judge-1, Patna in Title suit No. 68 of 2013 by which the learned Court below has refused to grant temporary injunction to the plaintiff / petitioner on the ground that the plaintiff has no *prima facie* case for grant of temporary injunction.

3. The brief facts of the case are that the petitioner, who is plaintiff in the suit, filed Title Suit No. 68 of 2013 in the Court of Sub-Judge 5th, Patna which was subsequently transferred to the learned Court of Sub-Judge, 1st, Patna claiming that the land detailed in Schedule 1 in the suit was owned and possessed by defendant No. 1 Jagdish Sharma who got it by partition from other pattidars and his name was mutated in the revenue record. Defendant No. 1 has executed a registered deed of power of attorney dated 16.06.2008 in favour of proforma defendant No. 4 (husband of the plaintiff) authorising him to look after his property mentioned in Schedule 1 as well as to sale the land and to do all other works as mentioned therein. Defendant No. 1 also received Rs. 9 Lakhs from the proforma defendant No. 4 on the day he executed the power of attorney and a money receipt was issued on a stamp paper duly signed by the witnesses acknowledging that he had no right to put any objection if the said land is sold



by the proforma defendant. Accordingly, the proforma defendant sold the land by two registered sale deeds 30.08.2008 and 24.02.2010 in favour of plaintiff and put the plaintiff in possession and since then she has absolute right, title and possession over the same and after mutating the same in her favour, she is getting regular rent receipt from the State of Bihar.

4. The further case of the plaintiff is that after sometime defendant second set started claiming the land of plot Nos. 1325 and 1326 as mentioned in the schedule 1 on the ground that they have purchased the same from defendant No. 1. On inquiry it was found that defendant No. 1 got the power of attorney dated 16.06.2008 cancelled vide a registered cancellation deed dated 01.07.2011 and thereafter sold these two plots (9 decimals of land of plot Nos. 1325 and 1326) vide registered sale deed dated 15.11.2011 in favour of defendant Nos. 2 and 3. The claim of the petitioner / plaintiff is that defendant No. 1, after execution of the power of attorney dated 16.06.2008, has no authority in the eye of law to cancel the said power of attorney on 01.07.2011 specially in the background that the land have already been transferred to plaintiff vide two registered sale deeds dated 30.08.2008 and 24.02.2010 as such the cancellation of power of attorney deed dated 01.07.2011 and execution of



sale deed dated 15.11.2011 in favour of defendant Nos. 2 and 3 is totally illegal, collusive, null and void and inoperative and as such not binding upon her which is still coming in peaceful possession of the plaintiff. Further case of the plaintiff is that defendant No. 1 is negotiating to sale the other land of Schedule No. 1 Property causing irreparable loss to her since the purchasers are trying to take the possession of the land in question illegally sold to them.

5. Learned senior counsel for the petitioner has submitted that the learned trial Court has dismissed the injunction petition of the plaintiff and learned lower appellate Court also dismissed the miscellaneous appeal filed on behalf of petitioner / plaintiff without any valid reason and without appreciating that after execution of power of attorney by defendant No. 1 in favour of defendant No. 4 who executed sale deed in favour of plaintiff, the defendant No. 1 left no right to transfer the said land under the power of attorney. He further submits that cancellation deed dated 01.07.2011 proves itself the execution of power of attorney dated 16.06.2008 by defendant No. 1.

6. On the other hand, learned counsel for the respondents has submitted that plaintiff / petitioner has no prima facie case



and the balance of convenience also does not lie in favour of the plaintiff / petitioner nor the plaintiff / petitioner is going to suffer any irreparable loss and as such this Civil Miscellaneous case is fit to be dismissed. The properties detailed in Schedule – 1 of the plaint are the ancestral properties of defendant No. 1 and his brother defendant No. 5 and in partition between them defendant No. 1 had been allotted $\frac{1}{2}$ share and defendant No. 5, Mithilesh Sharma also been allotted $\frac{1}{2}$ share in Schedule-1 property. Defendant Nos. 2 and 3 have purchased the Schedule 2 land and are coming in peaceful exclusive possession since the date of purchase and their names have been mutated in Sarista of the State of Bihar. It is alleged that forged and fabricated power of attorney dated 16.06.2008 and alleged sale deed dated 30.08.2008 and 24.02.2010 have been created.

7. Learned counsel for the respondents has further submitted that since neither the plaintiff nor defendant No. 4 have come in peaceful possession over the Schedule No. 1 land, the question of dispossession of the plaintiff and defendant No. 4 does not arise. The impugned judgment of trial Court as well as lower appellate Court are just and proper, according to law and needs no interference by this Court.

8. The law regarding grant of temporary injunction



and interlocutory order is covered by Order 39 of the CPC. It is now well settled that before a court grants a temporary injunction, it needs to be satisfied that a person seeking an injunction has a *prima facie* case in his favour and that balance of convenience and irreparable injury also lies in his favour.

9.The Hon'ble Supreme Court in **Kishoresinh Ratansinh Jadeja v. Maruti Corpn**, (2009) 11 SCC 229 held that it is well established that while passing an interim order of injunction under order 39 Rules 1 and 2 CPC, the Court is required to consider:

(i) Whether there is a *prima facie* case in favour of the plaintiff?

(ii) Whether the balance of convenience is in favour of passing the order of injunction?; and

(iii) Whether the plaintiff will suffer irreparable injury if an order of injunction would not be passed as prayed for?

10. The word 'prima facie case' apparently indicates something which at first impression makes out a triable case. The term 'prima facie case' should not be confused with the term 'prima facie title' which has to be established at the trial upon permitting the parties to lead evidence. Thus, it



means a substantial question which has been raised and which upon first sight needs to be investigated and decided on merits.

11. The word 'balance of convenience' denotes that the court must be satisfied that the comparative mischief and hardship which is likely to be caused to the person seeking injunction is more than the inconvenience likely to be caused to the other party by granting such injunction.

12. The word 'irreparable injury' guides the court to be satisfied that the refusal to grant injunction would result in such injury which cannot be compensated in term of costs or otherwise and the person seeking injunction needs to be protected from the consequences of apprehended injury.

13. In **Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors. reported in (1992) 1 SCC 719**, the Hon'ble Supreme Court has held that Rule 1 primarily concerned with the preservation of property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the Court, on exercise of power of granting ad interim injunction, is to preserve the subject matter of the suit in the *status quo* for the time being. Grant of



injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that (1) there is serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/ defendants, (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

14. The Apex Court in **Wander Ltd. Vs. Antox India (P) Ltd. 1990 Supp SCC 727** had the occasion to consider the principles regarding grants of injunction wherein the Apex Court made the observation that in such appeals, the Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner



the fact that Appellate Court would have been taken a different view may not justify interference with the Trial Court's exercise of discretion. This case was referred in **Skyline Education Institute (India) Pvt. Ltd. Vs. S.L. Vaswani (2010) 2 SCC 142**, wherein the three Judge Bench of Hon'ble Supreme Court observed that:

“ The ratio of the abovenoted Judgment is that once the Court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the Appellate Court will be loath to interfere simply because on a *de novo* consideration of the matter it is possible opinion on the issues of *prima facie* case, balance of convenience, irreparable injury and equity.”

15. In the present case, the learned trial Court has dismissed the injunction petition filed on behalf of plaintiff / petitioner which has been confirmed by the appellate Court below on the ground that the plaintiff / petitioner has got no *prima facie* case for grant of temporary injunction and balance of convenience is not in favour of plaintiff and no irreparable loss will occur to the plaintiff if the temporary injunction is not



granted in her favour.

16. From perusal of the impugned order, it appears that the learned Court below has passed the reasoned order under its discretionary power vested in it and this case is not fit case for interfering by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

17. Hence, this Civil Miscellaneous Application is dismissed.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	NAFR
CAV DATE	24.03.2023
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Transmission Date	

