

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.620 of 2023

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Anil Kumar Prasad Sah alias Anil Kumar Shah Son of Late Jamuna Prasad Shah, Resident of Mohalla-Bajajpatti, Main Road, Police Station and Post Office-Motihari Town, District-East Champaran at Motihari.

... .. Petitioner

Versus

1. Smt. Sanjana Shah Wife of Ravi Kumar Shah, resident of Mohalla-Belwanava, Police Station and Post Office-Motihari, District-East Champaran at Motihari.
- 2.1. Sandeep Shah Son of Raj Kumar Pd Shah, Resident of Mohalla- Bajajpatti, Police Station and Post Office-Motihari, District- East Champaran at Motihari.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Shashi Shekhar Dvivedi, Sr. Advocate Mr. Maheshwar Dhar Dwivedi, Advocate
For the Respondent No.1:		Mr. Binod Kumar Singh, Advocate Mrs. Vagisha Pragya Vacaknavi, Advocate Ms. Ankita Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 14-08-2025

The present civil miscellaneous petition has been filed for setting aside the order dated 08.06.2023 passed by the learned Additional District Judge-19, Motihari in Misc. Appeal No. 25 of 2019 whereby and whereunder the learned Additional District Judge-19 allowed the appeal filed by the defendant/appellant/respondent no. 1 and set aside the order dated 07.09.2019 passed by the learned Sub Judge-V, Motihari in Title Suit No. 606 of 2018, by which the learned trial court disposed of the petition filed by the plaintiff/respondent/petition under Order 39 Rules 1 and 2 of the Code of Civil Procedure,



1908 (for short 'the Code') directing both the parties to maintain *status quo* over the disputed land.

02. Briefly stated, the facts of the case are that the petitioner is plaintiff of Title Suit No. 606 of 2018 which has been filed for declaration of the title over the disputed land and also for declaration that sale deed dated 08.11.2004 executed by respondent no. 2 in favour of respondent no. 1 is null and void. For convenience, the parties would be referred, hereinafter, by their status in the present civil miscellaneous petition. The disputed land is situated in *Mauja-Belwana, PS.-Motihari, District-East Champaran, Khata No. 39, Plot No. 710 area 10 Kattha*. The disputed land was the ancestral property of one Jamuna Prasad Sah. Jamuna Prasad Sah had four sons, namely Raj Kumar Prasad Sah, Anil Kumar Prasad Sah, Sudhir Kumar Sah and Pramod Kumar Sah. Anil Kumar Prasad Sah is the petitioner and Raj Kumar Prasad Sah was original respondent no. 2 who has been substituted by his heir/legal representative in the present petition. Pramod Kumar Sah filed Partition Suit No. 207 of 1971/33 of 1974 against his father, Jamuna Prasad Sah, mother, Sarala Rani Sah, and his above named three brothers. The suit was disposed of on the basis of compromise and the compromise petition was treated as part of decree dated



02.03.1978 passed by learned Sub Judge-II, Motihari. In the compromise petition, entire property was divided into 08 Schedules and shares were allotted in the following manner:

Schedule 1-allotted to plaintiff-Pramod Kumar Prasad Sah

Schedule 2-allotted to defendant no. 1-Jamuna Prasad Sah

Schedule 3-allotted to defendant no. 2-Sarala Rani Sah

Schedule 4-allotted to Anil Kumar Prasad Sah (petitioner)

Schedule 5-allotted to defendant no. 4- Sudhir Kumar Sah

Schedule 6-allotted to defendant no. 5- Raj Kumar Sah
(original respondent no. 2)

Schedule 7- it was allotted jointly with 1/6th share for payment of taxes, loans, rent and other liabilities. It was also settled that expenses of marriages of four unmarried daughters (two daughters of defendant no. 1, one daughter of defendant no. 3 and one daughter of defendant no. 4) would be spent from Schedule-7 property and if expenses exceeded, all shareholders were supposed to pay jointly as per their shares. It was also made clear that only defendant no. 1, Jamuna Prasad Sah would have the right to deal with the property and any such transaction would be acceptable to all shareholders.

Schedule 8- This property was allotted to Anil Kumar Prasad Sah, Sudhir Kumar Sah and Pramod Kumar Sah for establishment of industry and petrol pump with right to deal with the said land.



03. The disputed land is part of Schedule-8 property.

The plaintiff claimed that in the year 1987, the three brothers divided the land of Schedule-8 amongst themselves and petitioner got *01 Bigha 04 Kattha* land in *Khata* No. 39 Plot No. 710 and had been coming in its peaceful possession. When the respondent no. 1 started claiming her right and title over *10 Kattha* land of the share of the petitioner and tried to disturb his possession, a proceeding under Section 144 Cr.P.C. was initiated, then the plaintiff came to know about execution of a sale deed dated 08.11.2004 for *10 Kattha* land by respondent no. 2 in favour of respondent no. 1. Further, claiming that the respondent no. 2 had no right to execute any sale deed as the land was not of his share and he was a rightless person and for this reason, the vendee did not get any right or possession over the suit land, the petitioner filed Title Suit No. 606 of 2018 praying for declaration of title over the suit land in his favour and also sought declaration that sale deed dated 08.11.2004 to be a void document. During pendency of Title Suit No. 606 of 2018, apprehending dispossession of the suit land in the hands of respondent no. 1 and also alienation by her, the petitioner filed a petition under Order 39 Rules 1 and 2 of the Code for interim injunction against respondents with prayer to restrain



her from changing the nature of the suit land and alienating the suit property. The learned trial court disposed of the said land vide its order dated 07.09.2019 directing both the parties to maintain *status quo* over the disputed land. Aggrieved by the said order dated 07.09.2019, the respondent no. 1 preferred appeal before the court of learned District Judge, Motihari and in the Misc. Appeal No. 25 of 2019, the learned first appellate court passed the order dated 08.05.2023 and allowed the appeal and set aside the order dated 07.09.2019. This order is under challenge before this Court.

04. Mr. Shashi Shekhar Dvivedi, learned senior counsel, appearing on behalf of the petitioner, submitted that the impugned order is not sustainable and is completely misconceived. The learned appellate court did not consider for a moment that respondent no. 2 has no authority to sell the disputed land to respondent no. 1 as the said land was allotted in the share of petitioner and his two brothers in compromise decree dated 02.03.1978. Mr. Dvivedi further submitted that the learned first appellate court committed further mistake by considering the disputed land to be joint property while in the compromise decree it was made clear that the disputed land was allotted in share of the petitioner and his two brothers. Mr.



Dvivedi further submitted that act of the respondent no. 2 amounts to changing the final order of a court of competent jurisdiction at the will of respondent no. 2 when the suit land was not allotted to him. Mr. Dvivedi straightway referred to compromise decree in Partition Suit No. 207 of 1971 of which the compromise petition of the parties formed a part to stress that there is no confusion with regard to Schedule-8 property that it was exclusively allotted in the share of three brothers, namely Anil Kumar Prasad Sah, Sudhir Kumar Sah and Pramod Kumar Sah for establishing industry and petrol pump and they have been given right to deal with the land of Schedule 8 and it was also made clear that the other shareholders would have no objection. Therefore, other shareholders have no concern with the property of Schedule-8. Mr. Dvivedi further submitted that there is no dispute over the distribution of the property from Schedule -1 to Schedule-6. There is further no dispute over Schedule-7 property as the said property was treated as joint property and all the shareholders were entitled to 1/6th share subject to condition that all liabilities and marriage expenses of daughters of the family were to be met from this property. Only after all expenses were covered, then the shareholders would have their 1/6th share and in case expenses exceeded the income



from the property, the shareholders were required to bear the expenses according to their 1/6th share. At the same time, Jamuna Prasad Sah (defendant no. 1) was given right to deal with the property and any transaction so made by the defendant no. 1 of Partition Suit No. 207 of 1971 was to be acceptable to all the shareholders. Under the same family arrangement, it has been clearly mentioned that whatever land has been mentioned in Schedule-8, the said land was given to Anil Kumar Prasad Sah, Sudhir Kumar Sah and Pramod Kumar Sah for running the business of petrol pump and industry and they were also given power to deal with the suit land and no shareholders would object to it.

05. Mr. Dvivedi further submitted that this recital makes it clear that the Schedule-8 land was given jointly to three brothers including the petitioner and other shareholders have no claim over the said land. Still, the respondent no. 2 violated the agreement and sold a part of land of Schedule-8 to respondent no. 1, which is against the compromise entered by respondent no. 2 along with other shareholders.

Mr. Dvivedi further submitted that the respondents claimed that a private partition took place in the year 1987 with regard to Schedule-8 property. The story of this private partition



is not believable as in the said partition, the deceased father of the petitioner, namely Jamuna Prasad Sah, had also been allotted share. At the same time, property of deceased father was not made part of the partition, which is very surprising, as the property of deceased-father and deceased mother would devolve upon their sons and would normally form part of a partition if any such partition took place between the sons. Mr. Dvivedi further submitted that even if any such private partition had taken place, the same would not override the earlier compromise decree. The compromise decree of a court of competent jurisdiction cannot be varied, modified or set aside by a subsequent private partition between the parties as the said power vests only in a competent court.

06. Mr. Dvivedi reiterated that language of Schedule-8 is unambiguous and the learned first appellate court wrongly interpreted the language of Schedule-8. It is a document of the parties and their intention was reflected from the language used in Schedule-8. Even the court which passed the compromise decree could not have modified the said language as it only put the seal of approval over the compromise. However, the learned first appellate court by passing the impugned order, has set aside the compromise for which it was not empowered. Therefore,



strong *prima facie* case lies in favour of the petitioner.

Mr. Dvivedi next submitted that the respondents have also placed reliance on the proceeding which took place under Section 144 Cr.P.C. in support of their contention, but the said proceeding has no legal value after lapse of 60 days and it is common knowledge that such proceedings are not above board.

07. Mr. Dvivedi further submitted so far as irreparable loss is concerned, it is not for the person seeking injunction to show that he would suffer irreparable loss but it is for the person who wants to dispose of the property to show that he would suffer irreparable loss, if is not permitted to alienate the property. Apparently, the respondents have failed to show any such necessity. Moreover, the *lis* property should be preserved and learned senior counsel referred to the decision of Hon'ble Supreme Court in the case ***Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass, (2004) 8 SCC 488***, wherein in Paragraph-10, it has been held as under:

“10. Be that as it may, Mr Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case



of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.”

08. Mr. Dvivedi further referred to the decision in the case of ***Dev Prakash & Anr vs Smt. Indra & Ors, (2018) 14 SCC 292*** wherein the Hon’ble Supreme Court, following the decision in the case of ***Maharwal Khewaji Trust (supra)***, held in Para-13 as under:

“13. In the preponderant factual backdrop, as outlined hereinabove, we are of the view that not only the reasons endeavoured to be cited in the impugned order [Dev



Prakash v. Indra, 2016 SCC OnLine Raj 842] in justification of the direction for public auction of the suit property lack in persuasion, those are apparently speculative and illogical, to say the least. The direction for disposal of the suit property by public auction, in the facts and circumstances of the case, clearly militates against the fundamental precept of preservation of subject-matter of any dispute pending adjudication in a court of law, more particularly relatable to a civil litigation, to appropriately decide on the rights of the parties for administering the reliefs to which they would be entitled eventually on the culmination of the adjudication. As it is, the very essence of the concept of temporary injunction and receivership during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable prejudice to the other side or to render the situation irreversible not only to impact upon the ultimate decision but also to render the relief granted, illusory. We do not wish to burden this order by the decisions of this Court on the issue except referring to the one in *Maharwal Khewaji Trust v. Baldev Dass* [*Maharwal Khewaji Trust v. Baldev Dass*, (2004) 8 SCC 488 : AIR 2005 SC 104] , wherein it has been underlined that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property to be changed, which may include alienation or transfer thereof leading to loss or damage been caused to the party who may ultimately succeed and which would as well lead to multiplicity of proceedings. Judicial discretion has to be disciplined by jurisprudential ethics and can by no means conduct itself as an



unruly horse.”

09. Mr. Dvivedi, thus, submitted that apart from existence of strong *prima facie* case in his favour, the petitioner fulfilling the other requirements of showing irreparable loss and balance of convenience would also lie in favour of the petitioner who wants to preserve the suit property.

10. Mr. Dvivedi, referring to the Probate Case No. 12 of 1996, which was institute by Anil Kumar Prasad Sah (present petitioner), Sudhir Kumar Sah and Pramod Kumar Sah making Raj Kumar Prasad Sah (original respondent no. 2) and others as opposite parties, contended that orders of the probate court does not confer title of the property to the person who has been granted property by the Will in which probate has been granted. The order of the probate court only certifies to the fact that the Will had been properly executed and it is not a forged and fraudulent document. Grant of probate to the petitioner allows the legatee to administer the estate of the testator and nothing more. Mr. Dvivedi referred to the decision of Hon’ble Supreme Court in the case of ***Delhi Development Authority Vs. Mrs. Vijaya C. Gurshaney, (2003) 7 SCC 301***, wherein the Hon’ble Supreme Court held that it is settled law that a Testamentary Court, whilst granting Probate or Letters of Administration, does



not even consider particularly in uncontested matters, the motive behind execution of a testamentary instrument. It further held that a Testamentary court is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will. The Hon'ble Supreme Court further held that it is settled law that the grant of a Probate or Letters of Administration does not confer title to property. They merely enable administration of the estate of the deceased. Thus, it is always open to a person to dispute title even though probate or Letters of Administration have been granted. Thus, Mr. Dvivedi submitted that the learned first appellate court completely missed all the above noted points and passed an erroneous order which could not be sustained.

11. Mr. Binod Kumar Singh, learned counsel, appearing on behalf of respondent no. 1, vehemently contended that the order of the first appellate court is a just and proper order and perfectly legal. There is no infirmity in it so as to require interference by this court. Learned counsel further submitted that Partition Suit No. 207 of 1971 was decreed on 02.03.1978 and respondent no. 1 purchased the property from Raj Kumar Prasad Sah (original respondent no. 2) on 08.11.2004 by registered sale deed. The petitioner has the



knowledge of execution of sale deed of respondent no. 1, still for 14 years, the petitioner did not challenge the sale deed for the reason that he has been knowing about the fact that further partition has been taken place with regard to Schedule-8 property and the present respondent no. 2 was within his rights to execute the sale deed of his share of land. Moreover, the suit has been filed by the petitioner seeking declaration only and a suit for declaration simpliciter is not maintainable. On this aspect that declaratory suit without consequential relief is not maintainable, the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of *Venkataraja v. Vidyane Doureradjaperumal, (2014) 14 SCC 502*. Learned counsel, thus, submitted that when the suit of the petitioner itself is not maintainable, he cannot seek injunction against respondents.

12. Learned counsel next submitted that language of compromise petition is unequivocal and there can be no dispute as to interpretation of the compromise decree. In respect of Schedule 1 to Schedule-6 land, learned counsel submitted that except for the person who got the scheduled property, it has been made clear in every schedule that other shareholders have no concern with the property of Schedule 1 to Schedule 6. But there is no such recital in Schedule-7 and Schedule-8 properties



between the parties as is clear from the language adopted in Schedules 7 and 8, which shows that status of the properties of these two schedules is different from other scheduled property.

13. Learned counsel further submitted that in the sale deed of 08.11.2004, which was executed by original respondent no. 2 in favour of respondent no. 1, there is a recital that a partition took place and a memo of partition was prepared on 03.06.1997. This shows the respondent no. 2 executed the sale deed in terms of partition dated 03.06.1997 in respect of Schedule-8 property. Learned counsel further submitted that much stress has been put on the fact that Schedule-8 property was exclusively allotted to three brothers, namely Anil Kumar Prasad Sah, Sudhir Kumar Sah and Pramod Kumar Sah. But from the recital it is also apparent that the property was given to these three brothers for running the business of petrol pump and industry but the shareholders did not loose their rights and this fact is apparent from further recital where details of the suit property of Schedule-8 has been mentioned. In the recital of Schedule-8, the details have been mentioned, there is averment that it is reminded that out of the Schedule-8, defendant no. 1- Jamuna Prasad Sah, defendant-2-Sarala Rani Sah and defendant no. 5-Raj Kumar Prasad Sah, would get their share of land and



building from the joint property and whatever is left out of the joint property, all the shareholders would have 1/6th share. From perusal of Schedule-8 it would appear that it deals with *Khata No. 39, Plot 710* area 04 acre 12 *dhurs*, apart from other properties and from the aforesaid recital, it is clear that Raj Kumar Prasad Sah, who was defendant no. 5, and who was separately allotted Schedule-6 of compromise decree, was also allotted share in Schedule-8. This fact was within the knowledge of the petitioner and his other brothers. But suppressing this material fact, the petitioner gave incorrect, wrong and false statement in his plaint and also in civil miscellaneous petition. For concealment of the fact, the present civil miscellaneous petition is fit to be dismissed with exemplary cost. Learned counsel further submitted that the petitioner has not come before this Court with clean hands and even got an order for maintaining *status quo* by both the parties vide order dated 02.11.2023 making a misleading pleading that Schedule-8 property was allotted exclusively to the petitioner-Anil Kumar Prasad Sah, Sudhir Kumar Sah and Pramod Kumar Sah. Learned counsel further submitted that precisely for this reason, the petitioner did not challenge the sale deed for about 14 years. Learned counsel further submitted that grant of injunction is an



equitable relief and therefore, the person seeking injunction must come with clean hands. But this petitioner approached the Court suppressing the material facts and therefore, he is not entitled to equitable relief of injunction and his prayer is liable to be rejected on this sole ground. Learned counsel referred to a decision of learned Single Judge of Himanchal Pradesh High Court in the case of ***Smt. Kalawati vs Sh. Netar Singh & Others, AIR 2016 HP 85***, wherein the learned Single Judge held that the fact that the petitioner has not approached the court with clean hands in itself is sufficient ground for not granting the relief of injunction.

14. Learned counsel further submitted that in the partition of 03.06.1997, from *khata no. 39, khesra no. 710*, 64 decimal area was allotted to Raj Kumar Prasad Sah, vendor of respondent no.1. Similarly, petitioner was also allotted 64 decimal land. Sudhir Kumar Sah was allotted 64 decimal land whereas Pramod Kumar Sah was allotted 66 decimal land. Share of deceased father from Plot No. 710 of *khata No. 39* was also shown in the partition deed who was allotted 01 acre 36 decimal land of *Khata No. 39* Plot No. 710. This partition deed though, not registered, is not a forged document and it is a genuine and admitted document containing signatures of all four brothers.



The genuineness of the document has been further proved by the orders of the Probate Court passed in Probate Case no. 12 of 1996 in the year 2016. The reason for allotting share to deceased father arose as land of Schedule-8, especially *khata no. 39 plot no. 710* forms the part of schedule property, having area 01 *Bigha 06 Katha 10 Dhur* equivalent to 1.52 *Acre*, of the Will. Now, this Will was executed by the testator-Jamuna Prasad Sah in favour of a number of legatees including the son of the petitioner and the sons of his two other brothers. If the land of *Khata No. 39 Khesra No. 710* was exclusively allotted to the petitioner and his two brothers, there was no occasion for including the same land in the Will of the father of the petitioner and the present petitioner was one of the petitioners in Probate Case No. 12 of 1996 seeking probate of the said Will. The probate of the Will dated 17.06.1993 was granted unopposed vide order dated 12.08.2016. Jamuna Prasad Sah died after execution of the Will and as the property of Schedule-8 especially *khata no. 39 khesra no. 710 area 1.52 acre* was part of the Will property, the brothers agreed amongst themselves to allocate that much area of land to the deceased father so that Will could be given effect to. Therefore, the contention of the learned senior counsel for the petitioner that a deceased person



was allotted share is without any merit. Denial of the partition dated 03.06.1997 flies in face of the petitioner since petitioner was one of the petitioners seeking probate of the Will by which certain property was given to the son of the petitioner and other legatees.

15. Learned counsel further submitted that after partition dated 03.06.1997, sale deeds were also executed by another brother, Sudhir Kumar Sah, wherein in the West side of the boundary, property of respondent no. 1 has been shown. Therefore, it is apparent that partition dated 03.06.1997 was acted upon by all the brothers. Further, respondent no. 1 got mutation of the land done in her name and municipal rent receipts have been issued in the name of respondent no. 1. So, *prima facie* case is in favour of the respondent no. 1. Learned counsel further submitted that it is very surprising that the learned trial court ordered for maintenance of *status quo* though the learned trial court did not find any *prima facie* case, balance of convenience or irreparable loss lies in favour of the petitioner. If the three ingredients, i.e, *prima facie* case, balance of convenience and irreparable loss for grant of injunction, have been found missing in the case of the petitioner, no *status quo* order ought to have been passed by the learned trial court.



Further, against the finding of the learned trial court about absence of three ingredients, the petitioner did not prefer any appeal and did not challenge the finding. So, the finding of the learned trial court has attained finality and the same could not be challenged before this Court in civil miscellaneous petition as no appeal was preferred. Therefore, the case of the petitioner is hit by principles of *res judicata*.

16. Learned counsel further submitted that the petitioner had not challenged any of the documents of the respondents and not even the partition dated 03.06.1997 though specific plea has been taken by the respondent no. 1 in her written statement. Considering this fact along with recital of Schedule-8 of compromise petition of compromise decree, it is apparent that the petitioner has no *prima facie* case and respondent no. 1 has rightfully purchased the suit property for consideration as his vendor was having share in *Khata No. 39*, Plot No. 710, Area 04 Acres 12 decimal.

17. Learned counsel further submitted that from the year 2004 to 2018 there was no dispute between the parties. For the first time, dispute was created by the petitioner in 2018 when Section 144 proceeding was initiated. It is surprising that for 14 years no injury was being caused to the petitioner and all



of sudden, he started having apprehension. Delay is one of the important grounds to refuse temporary injunction and, therefore, the petitioner is not entitled for the relief of temporary injunction. So, balance of convenience is not in favour of the petitioner rather it is in favour of respondent no. 1. Once, the respondent no. 1 has been able to show that her vendor has a rightful share in the Schedule-8 land and she has purchased the part of the said land from the share of her vendor, *prima facie* case is in favour of respondent no. 1 and this fact get fortified from the circumstances, as there has been no dispute from the year 2004 to 2018 between the parties. Other co-sharers also recognized the right of respondent no. 1 who was shown in boundary of their sale deeds. The learned trial court also recorded that none of the ingredients, i.e., *prima facie* case, balance of convenience and irreparable loss lie in favour of the petitioner and this finding remained unchallenged and the same cannot be challenged before this Court under its supervisory jurisdiction and this Court cannot disturb such finding.

18. Learned counsel further submitted that if no injury was caused to the petitioner from 2004 to 2018, it shows no irreparable loss is going to be caused to the petitioner even in future. Further, the probate case of the petitioner was filed in the



year 1996 and it shows the conduct of the petitioner is completely dishonest and he has approached this Court making false averment and concealing a number of material facts which disentitles him from seeking any relief of temporary injunction. Thus, the learned counsel reiterated that the petitioner has not approached this Court with clean hands and his prayer cannot be acceded to since 'one who seeks equity must do equity'. Thus, the learned counsel submitted that the present petition is devoid of merit and the same be dismissed.

19. By way of reply, learned senior counsel, appearing on behalf of petitioner, submitted that the facts of the case of *Venkataraja (supra)* are not applicable in the present case as in the said case possession by way of eviction of tenant was not sought and for this reason the suit of simple declaration was not found maintainable. Mr. Dvivedi further submitted that though a number of issues have been raised, this Court has only to decide whether injunction ought to be granted or not as other materials could be taken care of by the learned trial court. Mr. Dvivedi again referred to the decision in the case of *Maharwal Khewaji Trust (supra)* to submit that the Court has to ensure that the decree does not become barren and referred to the decision of this court in the case of *Dharam Nath Ojha v. Raghunath*



Ojha, 2001 (2) PLJR 268, wherein the learned Single Judge in

Paragraph-9 held as under:

“9. Having considered the rival submissions, I am of the view that this application ought to be allowed. Law is well settled that if a lis has been admitted for adjudication, then it becomes the duty of the Court to preserve the subject matter of the litigation by an appropriate order so that the same is available at the time of final adjudication and the decree does not become a barren one. Secondly, the circumstances have changed since the order dated 16.8.99 was passed. While dealing with such an application filed pursuant to this Court's order dt. 16.8.99, the trial court has recorded in its order dated 25.9.2000 (Annexure B) that no steps for preparation of the final decree have at all been taken by the parties. He has, therefore, found himself unable to entertain the said application. Secondly, after the aforesaid order has been passed whereby the balance of the suit has been revived, it is in the fitness of the things that this Court should interfere in the matter. In that view of the matter, both the sides are hereby injuncted from changing the nature, character, user of, or cutting any of the trees standing on, the suit property, or alienating any portion, till further order of this Court.”

20. I have given my thoughtful consideration to the rival submission of the parties and minutely perused the record.

21. Though lengthy submission has been advanced on behalf of the parties, but the matter in issue lies in very narrow compass whether the ingredients for grant of injunction, i.e.,



prima facie case, balance of convenience and irreparable loss are in favour of the petitioner or not? For deciding this, only a short discussion is required.

22. The whole issue revolves around the Schedule-8 of compromise petition of compromise decree dated 02.03.1978 passed in Partition Suit No. 207 of 1971. The description of Schedule 8 mentioned in compromise petition of compromise decree reads as under:

“८. यह कि, सुलहनामा हाजा के सिडिउल नं० ८ में जिस जमीन का तफसिल दिया जाता है, वह जमीन पेट्रोल टंकी के कारावार करने वो इन्डस्ट्री में जमीन देने के लिए श्री अनिल कुमार प्रसाद साह वो सुधीर कुमार प्रसाद साह वाँ श्री प्रमोद कुमार प्रसाद साह को दिया जाता है, कि ये तीनों व्यक्ति पेट्रोल टंकी के कारोबार वो इन्डस्ट्री के लिए इस जमीन को डिलीवीथ भी कर सकते हैं, इसमें किसी फरीक को कोई उजर एतराज नहीं है वो न होगा।”

Now, the Schedule-8 in which the details of properties have been mentioned reads as under:

“सिडिउल नं० ०८

तफसिल एराजी जो पेट्रोलटंककी कारोबार वो इन्डस्ट्री के लिए मुदई वो मुदालह नं० ३ ता ४ को दिया गया।

(क) ववाके मौजा वैलवनवा, थाना नं० १६७ जिला पूर्वी चम्पारण।

खाता	खेसरा	रकबा	कैफियत
39	710	4—12 मय दरखतान मौजुदे एराजी	

(ख) ववाके महल्ला पैठानटोली, थाना मोतिहारी नं० १२२ जिला पूर्वी चम्पारण।

खाता	खेसरा	रकबा	कैफियत
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32	2555	0-6	
	2556	0-7	मै मकान वो सहन
		0-13	

(ग) ववाके मौजा महल्ला विसाती पटी, थाना मोतिहारी नं0 122
जिला- पूर्वी चम्पारण।

खाता	खेसरा	रकबा	कैफियत
767	1384	0-4	मै मकान वो सहन
	1445	0-3	
		0-7	

(घ) मौजा कोल्हुअड़वा, थाना मोतिहारी, जिला पूर्वी चम्पारण।

खाता	खेसरा	रकबा
540	443	0-62
		ए-डी
मिजान:-	वैलवनवा (क)	4-12
	पैठानटोली (ख)	0-13
	विसातीपटी (ग)	0-7
	कोल्हुअड़वा (घ)	0-62
		4-94

बाज रहे की इस जायजाद का अपना अपना हिस्सा मुदालह नं0-1, 2
तथा 5 इजमाल जमीन व मकान में अपना हिस्सा पावेंगे व जो
इजमाल में बच जायेगा उसमें हर फरीक का 1/6 होगा।”

23. This recital at the end of the description of Schedule-8 property clinches the issue and does not leave any doubt. It shows that the claim of the petitioner that the property was exclusively allotted to the petitioner and his two brothers, namely Sudhir Kumar Sah and Pramod Kumar Sah, might not be correct. If it were so, there was no occasion for mentioning about rights of defendant nos. 1, 2 and 5 in the said Schedule.



24. Further, the inclusion of some property in the Will of testator-Jamuna Prasad Sah and the petitioner himself being a petitioner in Probate Case No. 12 of 1996, which was granted by vide order dated 12.08.2016 also points to the fact that vendor of respondent no. 1 got the share in the suit property of *Khata No. 39* Plot No. 710. Though the petitioner has denied partition of 03.06.1997, but the petitioner did not demur in taking benefit of the same partition in favour of his minor son in Probate Case No. 12 of 1996. Rather the petitioner has very conveniently omitted to mention about the probate case though Schedule-8 property formed part of the property of the Will for which probate was sought for by the petitioner. Mentioning of the name of respondent no. 1 in the western boundary of sale deed dated 19.04.2021 executed by the brother of the petitioner, namely Sudhir Kumar Sah, with respect to land comprised in *Khata No. 39* Plot No. 710 area 3.23 decimal, is also a pointer to the fact that respondent no. 1 came into possession of the suit land prior to the execution of the sale deed by the brother of the petitioner. Taking together these relevant facts, it amply demonstrates that the petitioner utterly failed to show any ‘*prima facie* case’ or ‘balance of convenience’ or ‘irreparable loss’ in his favour. The issue of preservation of *lis* property



would arise only if the petitioner could have shown *prima facie* case, balance of convenience and cause cause of irreparable loss to him and therefore, reliance placed on ***Maharwal Khewaji Trust (supra)*** is misconceived.

25. In the light of recital of Schedule-8 of compromise petition of compromise decree dated 02.03.1978 followed by subsequent events, like institution of Probate Case No. 12 of 1996 and purported partition dated 03.06.1997 and further execution of sale deed by brother of petitioner, namely Sudhir Kumar Sah, indicate absence of any *prima facie* case in favour of the petitioner. This fact also becomes apparent as area of *Khata* No. 39 Plot No. 710 is 04 acre 12 *dhurs* and if claim of the petitioner is taken on its face value that it had fallen in exclusive share of only three brothers, the share of the petitioner would come to 1.37 acres, but admittedly, the petitioner in Para-5 of his plaint has stated that he received 01 *Bigha* 04 *Kattha* from the suit plot of *Khata* No. 39 Plot No. 710, which comes around 74 decimal which is much less than the claimed share of the petitioner since it has nowhere been stated that any property of the suit plot of 710 was sold out reducing the share of his brothers. Therefore, there appears no *prima facie* case in favour of the petitioner and rather it appears



in favour of the respondent no. 1.

26. Further, the sale deed in favour of respondent no. 1 was executed on 08.11.2004 and till 2018, no issue arose between the parties. The petitioner has not been able to show what are the grounds of his apprehension after 14 years of execution of the sale deed by respondent no. 2 in favour of respondent no. 1. Merely saying that the petitioner came to know about sale deed after initiation of proceeding under Section 144 Cr.P.C. would not suffice for the purpose. Therefore, taking into account the absence of *prima facie* case, no balance of convenience lies in favour of the petitioner and the petitioner has also failed to show how any irreparable injury is going to be caused to him since there is nothing on record in support of the contention of the petitioner regarding irreparable injury.

27. In the light of aforesaid facts and circumstances and the discussion made here-in-before, I am of the considered opinion that the petitioner has failed to bring out a case in his support and there is no error of jurisdiction in passing the order dated 08.05.2023 by the learned Additional District Judge-19, Motihari and hence, the order dated 08.05.2023 is hereby **affirmed.**



28. Accordingly, the present civil miscellaneous petition is **dismissed**.

29. However, it is made clear that the observations made hereinabove are wholly in the context of the issue that arose in the present civil miscellaneous petition and the learned trial court would proceed to dispose of the suit pending before it without getting influenced in any manner.

(Arun Kumar Jha, J)

Ashish/-
V.K.Pandey

AFR/NAFR	AFR
CAV DATE	10.07.2025
Uploading Date	14.08.2025
Transmission Date	NA

