

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.451 of 2019

- 1.1. Zahid Shams S/o late Farida Khanam @ Farida Jawaaid and Late Jawaaid Shams, Resident of Mohalla - Pandriba (Bowli) Near Masjid Chowk, P.S. - Hajipur Town, P.O. - Hajipur, Dist. - Vaishali, Permanent resident of Mohalla - Chaudhary Tola, Ashram Road P.O. and P.S. Raxaul, Dist. - East Champaran.
- 1.2. Danish Shams S/o late Farida Khanam @ Farida Jawaaid and Late Jawaaid Shams Resident of Mohalla - Pandriba (Bowli) Near Masjid Chowk, P.S. - Hajipur Town, P.O. - Hajipur, Dist. - Vaishali, Permanent resident of Mohalla - Chaudhary Tola, Ashram Road P.O. and P.S. Raxaul, Dist. - East Champaran.

... .. Appellant/s

Versus

1. Dr. Md. Shamim Khan, Son of Late Abdul Samad Khan alias Abdul Samid Khan, resident of Mohalla- Pandariba Bauli, P.O. Hajipur, P.S. Hajipur Town, District Vaishali, the defendant/respondent no.1 and 3 at present residing at Mohalla Magar Hatta, Near Masjid Chowk, P.O. Hajipur, P.S. Hajipur Town, District- Vaishali.
2. Dr. Md. Kalim Khan. Son of Late Abdul Samad Khan alias Abdul Samid Khan, resident of Mohalla- Pandariba Bauli, P.O. Hajipur, P.S. Hajipur Town, District Vaishali, the defendant/respondent no.1 and 3 at present residing at Mohalla Magar Hatta, Near Masjid Chowk, P.O. Hajipur, P.S. Hajipur Town, District- Vaishali.
3. Md. Wasim Khan, Son of Late Abdul Samad Khan alias Abdul Samid Khan, resident of Mohalla- Pandariba Bauli, P.O. Hajipur, P.S. Hajipur Town, District Vaishali, the defendant/respondent no.1 and 3 at present residing at Mohalla Magar Hatta, Near Masjid Chowk, P.O. Hajipur, P.S. Hajipur Town, District- Vaishali.
4. Md. Nayeem Khan, Son of Late Abdul Samad Khan alias Abdul Samid Khan, resident of Mohalla- Pandariba Bauli, P.O. Hajipur, P.S. Hajipur Town, District Vaishali,
5. Md. Shahzad Khan, Son of Late Abdul Samad Khan alias Abdul Samid Khan, resident of Pandariba Bauli, P.O. Hajipur, P.S. Hajipur Town, District- Vaishali.
6. Monifa Khanam, daughter of Late Abdul Samad Khan alias Abdul Samid Khan, resident of Mohalla Pandariba Bauli, P.S. Hajipur Town, P.O.- Hajipur, District- Vaishali and Wife of Dilshad Ahmad Khan, resident of Mohalla Hathua Road Mirganj, P.O. and P.S. Mirganj, District- Gopalganj.
- 7.1. Ghazala Kahkasha Raushan alias Ghazala daughter of Rafiqua Khanam and Sohail Ahmad Khan Resident of Village - Mirjumla, Deshrajpur, P.S. and P.O. - Mahnar, District - Vaishali (Bihar).
- 7.2. Sohail Ahmad Khan Husband of Rafiqua Khanam, Resident of Village - Mirjumla, Deshrajpur, P.S. and P.O. - Mahnar, District - Vaishali (Bihar).

... .. Respondent/s



Appearance :

For the Appellant/s : Mr. Dhananjay Kumar, Advocate
For the Respondent/s : Mr. Ratan Kumar Sinha, Advocate
Mr. Anjani Kumar, Advocate
Mr. Abhishek Kumar, Advocate
Mr. Sweta Raj, Advocate
Mr. Kumari Shreya, Advocate
Mr. Achyut Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT**

Date: 19-08-2025

Heard Mr.Dhananjay Kumar learned counsel for the appellant and Mr.Ratan Kumar Sinha learned counsel for the respondent.

2. The present appeal has been filed against the order dated 16.04.2019 passed by the learned Sub-Judge-XII, Hajipur Vaishali, in Partition Suit No. 395 of 2012 by which the learned Court refuses to grant temporary injunction in respect of the part of the suit properties of Schedule IV of the plaint.

3. The brief facts of the case is that plaintiff and defendants are descendants of Abdul Samad Khan who was father of plaintiff and the defendants. The property described in Schedule IV of the plaint has been inherited by the plaintiff and the defendants from their father and mother which are the joint property and are liable to be partitioned between them. The plaintiff has jointly inherited with them and got interest in the said property but defendant no. 3 Md. Wasim Khan in order to deprive the plaintiff from her lawful share is adamant to make



construction and has partly constructed building and thereby changing the physical feature of the joint property. The defendants have transferred several parts of suit property prior to filing of the suit and the defendants no. 3 has already sold some land even during the pendency of the suit. Presently the defendants have been negotiating to sale the rest part of the suit property described in Schedule IV of plaint. Hence, the plaintiff had filed the instant suit for partition.

4. Learned counsel on the behalf of the appellant submitted that the impugned judgment is not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment. He further submitted that mother of defendant no. 2 & 3 has herself made statement in the suit that her husband did not make oral gift to any one. In fact, during the period of alleged oral gift father was suffering from different ailment virtually he was on death bed and was not maintaining any relationship with them. He further submitted that total suit properties are in schedule IV from which schedule I & II Land has been carved out on the basis of disputed oral gift, which is an important issue for consideration in partition suit which has been decided before trial.

5. Learned counsel on the behalf of the



respondent no. 2 and 3 submitted that the property described in Schedule IV of plaint is not joint property rather it's maximum part is exclusive property of defendant no. 2 and 3 who have acquired the said property from father by oral gift and other heirs of Abdul Samad Khan have no concern with the same. Respondent no. 2 and 3 have acted upon the said gift and coming in settled possession by constructing *pakka* residential house over one of the plots bearing RSP 88.

5.i. He further submitted that a memorandum of oral gift and affidavit both having been executed by the father who was the donor admitting the execution of gift and delivery of possession. There is also a written statement filed in a Partition Suit no. 210 of 1998 by the father Late Abdul Samad himself wherein the father admitted to have made oral gift as aforesaid in 1999 in favour of his three sons, defendant no. 2 to 4. He further submitted that the defendants have been able to make out a strong *prima facie* case in their favour as the property have been coming in their peaceful possession since 1999 from the time of oral gift thus the balance of convenience heavily leans in favour of these defendants and they would suffer irreparable injury if injunction is granted.

5.ii. He further submitted that the equitable



prayer/relief of injunction was fit to be rejected on the ground of unexplained delay in seeking injunction and thus injunction was rightly rejected for this he relied on judgment of Hon'ble Apex Court in case of ***Mandali Ranganna and ors. v. T. Ramachandra and ors.*** reported in ***(2008) 11 SCC 1*** (Para 22 to 25).

“22 Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not, however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavors to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative, Contentions raised by the parties must be determined objectively.

23. This Court in M. Gurudas v. Rasaranjan¹ noticed: (SCC p. 374, para 19) “19. A finding on ‘prima facie case’ would be a finding of fact. However, while arriving at such a finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhavan that the decision of the House of



Lords in American Cyanamid Co. v. Ethicon Ltd would have no application in a case of this nature as was opined by this Court in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. and S.M. Dyechem Ltd. v. Cadbury (India) Ltd but we are not persuaded to delve thereinto." Therein, however, the question in regard to valid adoption of a daughter was in issue. This, Court held that Nirmala was not a validly adopted daughter. b. This Court wondered: (M. Gurudas case, SCC p. 379, para 34)

"34. The properties may be valuable but would it be proper to issue an order of injunction restraining the appellants herein from dealing with the properties in any manner whatsoever is the core question. They have not been able to enjoy the fruits of the development agreements. The properties have not been sold for a long time. The commercial property has not been put to any use. The condition of the properties remaining wholly unused could deteriorate. These issues are relevant. The courts below did not pose these questions unto themselves and, thus, misdirected themselves in law."

"24. Emphasis was also laid on the conduct of the parties while granting an order of injunction.

"25. In Seema Arshad Zaheer v. Municipal Corpn. of Greater Mumbai this Court held: (SCC p. 294, para 30)"

"30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie



case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (it) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."

5.iii. He further submitted the reliance on the followings judgment of Hon'ble Apex Court for supporting his claim reported in ***AIR 1996 SC 2358*** (Para 3 & 4). ***Asma Lateef v. Shabbir Ahmad (2024) 4 SCC 696*** (Para 32) ***West Bengal Housing Board v. Pramila Sanfui and ors. (2016) 1 SCC 743*** (Para 24). ***AIR 2010 SC 3221*** (Para 16, 12 to 15), ***(2023) 1 SCC 634*** (Para 36).

6. Learned counsel on the behalf of the respondent no. 5 to 7(A) submitted that for the 1st time on notice of appeal these respondents learnt about the instant appeal as well as the title suit. He further submitted that the suit property is the property left by their father & mother & jointly inherited by all their legal heirs and the same was never orally



gifted to the respondents/defendants no. 2 to 4 as falsely claimed by them. The learned Trial Court committed grave illegality and jurisdictional error in refusing to grant temporary injunction in respect of the part of joint properties described in Schedule IV of plaint, on the basis of false and vexatious claim made by defendant no. 2 and 3 in their show cause and written statement. He further submitted that the entire story of oral gift in favour of the defendant no. 2 to 4 appears to be false and fabricated. He lastly submitted that the impugned order passed by the Learned Trial Court is otherwise bad & fit to be set aside or modified by imposing temporary injunction restraining the defendants no. 2 to 4 from alienating the entire suit property and changing the physical features of the same during the pendency of the suit.

7. On perusal of facts and circumstances of the present case this Court is at view that it appears *prima facie* that the gift has been made in favour of respondent no. 2 to 4 it is evident from the written statement filed in a Partition Suit no. 210 of 1998 by the father Late Abdul Samad himself wherein the father admitted to have made oral gift as aforesaid in 1999 in favour of his three sons, defendant no. 2 to 4. The respondents has the possession over the property and the question of



possessions is important in deciding whether injunction should be issued or not. The defendants with respect to these properties have been able to make out a strong *prima facie* case in their favour as the property have been coming in their peaceful possession since 1999 from the time of oral gift and on being mutated they are paying rent and getting rent receipts and also sold lands by executing registered sale deeds and thus the balance of convenience heavily leans in favour of these defendants and they would suffer irreparable injury if injunction is granted.

8. Moreover, a person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. Temporary injunction may not be granted if the applicant fails to establish a *prima facie* case. A *prima facie* case means that the applicant must demonstrate that there is a reasonable likelihood of success on the merits of the case. Further while filing partition suit in 2012 the gift was not challenged nor any declaration was sought for in that regard and no pleading to that effect was made. Also no pleading was amended nor any relief was sought for to challenge the gift and the sale deeds made on the basis of gift deed nor the mutation



was challenged nor possession was sought to be recovered. It is clearly established that balance of convince lie in the favour of respondents and the appellants failed to constituted prima facie case in their favour.

9. The law regarding grant of temporary injunction and interlocutory order is covered under section 94(c) and under Order 39 of the CPC. The cardinal principles for grant of temporary injunction is well settled. No temporary injunction should be issued unless the three ingredients are made out, namely, (i) prima facie case, (ii) balance of convenience and (iii) irreparable injury which could not be compensated in terms of money. If a party fails to make out any of the three ingredients he would not be entitled to the injunction and the Court will be justified in declining to issue injunction.

10. The Hon'ble Supreme Court in ***Dalpat Kumary. Prahlad Singh*** reported in (1992) 1 SCC 719 it has been observed as follows:

“5...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."

11. In the aforesaid facts and circumstances and the law discussed above, in my considered opinion, the learned Trial Court has rightly held that the appellant has no prima facie case, balance of convenience does not lies in her favour and no irreparable loss would cause if temporary injunction is not granted in favour of the plaintiff/appellant. There is no valid reason to interfere in the finding of the learned Trial Court. The



present appeal has no merit and liable to be dismissed. At last, it is made clear that any observation made in this judgment shall not affect the merit of the case for final disposal of the case by the learned trial Court.

12. Accordingly, this appeal is disposed off.

13. Office is directed to send back the trial Court records and proceedings along with a copy of this judgment to the trial Court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	AFR
CAV DATE	01.07.2025
Uploading Date	19.08.2025
Transmission Date	N/A

