

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**CMPMO No. 346 of 2020
Decided on: September 28, 2020**

Kishori Lal and othersPetitioners

Versus

Smt. Lajwanti and others ...Respondents

Coram

**Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting¹? Yes.**

For the petitioners: Mr. Naresh K. Sharma, Advocate,
through video-conferencing.

For the respondents: Nemo.

Sandeep Sharma, J. (Oral)

Instant petition filed under Art. 227 of the Constitution of India, lays challenge to judgment dated 20.7.2020 passed by learned Additional District Judge, Hamirpur (HP) in Civil Misc. Appeal no. 3 of 2020, affirming order dated 13.3.2020 passed by learned Senior Civil Judge, Nadaun, District Hamirpur, H.P. in C.M.A. No. 95 of 2019, whereby application having been filed by the petitioners-plaintiffs (hereinafter, 'plaintiffs) under Order XXXIX, rules 1 and 2 CPC, praying therein for restraining the

Whether reporters of the Local papers are allowed to see the judgment? .

respondents/defendant (hereinafter, 'defendants') from raising any construction or changing the nature of suit land i.e. land comprising of Khata No. 42 min, Khatauni No. 42 min Khasra Nos. 454, 455, 456, 457, 458, 459 and 460/2, kita 7, measuring 03-07-70 hectare and Khata No. 72, Khatauni No. 72, Khasra Nos. 399 and 400, Kita 2, measuring 00-03-38 Hectares as per Jamabandi for the years 2010-11, situate in Tikka Dhola Kuwal, Mauza Jassai, Tehsil Nadaun, District Hamirpur, Himachal Pradesh (hereinafter, 'suit land'), came to be dismissed.

2. For having a bird's eye view of the matter, certain undisputed facts as emerge from record are that the plaintiffs filed a civil suit before learned trial Court, seeking therein declaration to the effect that the suit land is an ancestral joint Hindu coparcener property of plaintiffs and defendants Nos. 1 and 2 and they have preferential right qua the suit land and sale deed No. 3/2019, dated 31.2019 in respect of land comprising of Khata No. 42 min, Khatauni No. 42 min Khasra Nos. 454, 455, 456, 457, 458, 459 and 460/2, kita 7, alongwith Tatima and Khasra No. 462, measuring 01-28-79 measuring 03-07-70 hectare, alongwith house of the plaintiffs existing over Khasra No. 457, 458 and 459 and sale

deed No. 4/2019, dated 3.1.2019 executed by defendant No.1 in favour of defendants Nos. 3 and 4, subsequent mutations Nos. 178 and 179 dated 10.1.2019 are null and void, alongwith consequential relief of permanent prohibitory injunction, thereby restraining defendants from interfering in any manner in their possession. In the suit, plaintiffs pleaded that the suit land is an ancestral joint Hindu coparcener property of the plaintiffs and defendants Nos. 1 and 2 and they are owner-in-possession of the suit land and defendants are out of possession. Plaintiffs claimed that since the suit land has been inherited by defendant No.1 from her husband, Prema who himself inherited the same from his father, she had no right, whatsoever, to sell the same to defendants Nos. 3 and 4. Plaintiffs averred in the plaint that husband of defendant No.1, in the Will executed in her favour had written, "*Lajwanti ki tehl sewa ke baad property le sakte hain.*" Plaintiffs while claiming that they are maintaining their mother, claimed in the suit that defendant No.1 is an old aged *Pardanasheen* lady and defendant No. 2 taking benefit of her old age, transferred the suit land without their consent and permission. Besides above, plaintiffs claimed in the suit that even otherwise, defendant No.1 was not competent to

execute sale deeds as such, sale deeds Nos. 3/2019 and 4/2019, dated 3.1.1999, whereby suit land came to be alienated to defendants Nos. 3 and 4, behind their back, are required to be declared null and void. Plaintiffs claimed that the suit land is a commercial and agricultural land, which abuts Kangoo-Dhaneti road. House, cattle shed, toilet and water tanks of plaintiff No.1 are existing on Khasra Nos. 457, 458 and 459 and he had constructed his house in the year 1974 with the consent of his father and defendant No.1. It is further averred in the plaint that the plaintiffs came to know about sale deeds when defendants Nos. 3 and 4 threatened to dispossess them from the suit land.

3. Aforesaid claim of the plaintiffs came to be resisted by defendant on the ground that the suit land is not ancestral joint Hindu coparcener property of defendants Nos. 1 and 2. Defendants claimed that after execution of sale deeds Nos. 3/2019 and 4/2019, dated 3.1.2019, defendants Nos. 3 and 4 are in possession of suit land. Defendants claimed that defendant No. 1 after having inherited the suit land from her late husband, Prema, sold the same to defendants Nos. 3 and 4. As per defendants, late Prema had inherited the suit land by way of gift deed, which he

subsequently bequeathed in favour of defendant No.1 by way of registered deed. Defendants claimed that since plaintiffs are not maintaining defendant No.1 nor are taking care of her, she, of her volition and in a fit state of mind, transferred the suit land in favour of defendants Nos. 3 and 4 for consideration. While denying claim of the plaintiffs that they have preferential right to purchase the property, defendants specifically stated in their written statement that there was no necessity of consent of the plaintiffs. Defendants also denied that the plaintiff No.1 had constructed his house in 1974 with the consent of his father and defendant No.1.

4. Alongwith suit, plaintiffs also filed an application under Order XXXIX, rules 1 and 2 CPC, for grant of ad-interim direction, restraining defendants from raising any construction, changing nature of suit land or alienating the same by way of sale, gift, mortgage etc or creating any charge thereupon.

5. Learned trial Court, on the basis of pleadings adduced on record, dismissed the application and held that the plaintiffs have neither prima facie case in their favour nor balance of convenience lies in their favour and defendants Nos. 3 and 4 being bona fide purchasers for consideration,

cannot be retrained from using suit property being lawful owners. Being aggrieved and dissatisfied with aforesaid order passed by learned trial Court, plaintiffs filed an appeal under Order XLIII, rule 1(r) CPC, in the court of learned Additional District Judge, Hamirpur, which also came to be dismissed vide judgment dated 20.7.2020. In the aforesaid background, plaintiffs have approached this Court in the instant proceedings praying therein to quash and set aside aforesaid judgment and order passed by learned Courts below.

6. I have heard learned counsel for the parties and perused the material available on record.

7. It is well settled that before grant of injunction, court must be satisfied that the party praying for relief has a prima facie case and balance of convenience also lies in its favour. While granting injunction, if any, court is required to consider whether the refusal to grant injunction would cause irreparable loss to such a party. Apart from aforesaid well established parameters/ingredients, conduct of the party seeking injunction is also of utmost importance, as has been held by Hon'ble Apex Court in case **M/S Gujarat Bottling Co.Ltd. & Ors. v. The Coca Cola Co. & Ors.**, AIR 1995 2372.

In case a party seeking injunction fails to make out any of the three ingredients, it would not be entitled to injunction. Hon'ble Apex Court in case **Mahadeo Savlaram Shelke v. The Puna Municipal Corpn.**, J.T. 1995(2) S.C. 504 relying upon its earlier judgment in **Dalpat Kumar v. Prahlad Singh**, (1992) 1 SCC 719 has aptly interpreted phrases, "prima facie case", "balance of convenience" and "irreparable loss". Hon'ble Apex Court has observed in the judgment (supra) that the phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. The existence of prima facie right is a condition 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 balance of convenience must be in favour of granting injunction. The court while granting or refusing 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.

Hon'ble Apex Court has held as under:

“...the phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. The existence of prima facie right and infraction of the enjoyment of his property or the right is a condition 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

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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 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. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

8. Though, the documents taken into consideration by learned Courts below, reveal that the suit land in Khata No. 42, is exclusively owned and possessed by defendant No.1 and the land in Khata No. 72 is jointly owned and possessed by defendant No.1 alongwith other co-sharers namely Ram Swaroop, Kanti Devi etc. Similarly, it is also not in dispute that earlier the suit land was owned and possessed by husband of defendant No. 1, Prema, but he bequeathed the

same in favour of defendant No.1, by way of Will No. 144, dated 2.7.1997, since sons of Prema were not looking after their parents and it is stipulated in the Will that if they will look after and serve defendant No.1, they will be entitled to get the property from their mother. Defendant No.1 sold out entire suit property to defendants Nos. 3 and 4, through sale deeds Nos. 3/2019 and 4/2019 on the basis of which mutations Nos. 178 and 179 came to be attested in favour of defendants No. 3 and 4. Aforesaid sale deeds have been laid challenge on the ground that defendant No.1 is not competent to sell suit property in favour of defendants Nos. 3 and 4, same being ancestral joint Hindu coparcener property. Documentary evidence on record, clearly reveals that the suit land was inherited by defendant No.1 through Will and as such, suit land lost its character of joint Hindu coparcener property, rather, it became absolute property of defendant No.1 by virtue of provisions underlying S.14 of Hindu Succession Act as such, there is no merit in the claim of the plaintiffs that the suit land is a joint Hindu coparcener property and defendant No.1 has no right to sell out the same without legal necessity.

9. Leaving everything aside, this Court finds from record that defendant No.1 is still alive and has categorically stated that she has willfully sold out suit land to defendants Nos. 3 and 4 through sale deeds Nos. 3/2019 and 4/2019 and mutations Nos. 178 and 179 have been attested in favour of defendants Nos. 3 and 4. Since there is no dispute qua execution of Will in favour of defendant No.1 sale, if any, made on the strength of same, by defendant No.1 of suit property cannot be laid challenge, especially when defendant No.1 has herself admitted the factum with regard to sale of suit property by her in favour of defendants Nos. 3 and 4. Once defendant No.1 became exclusive owner-in-possession of suit land, after having inherited the same through Will, she is well within her right to deal with the same, as per her sweet will, as such, plaintiffs cannot claim preferential right to purchase the same.

10. Mr. Naresh Sharma, learned Counsel appearing for the plaintiff argued that the house of plaintiff No.1 is situate over the suit land, which fact is evident from documents/photographs placed on record. He further argued that as per information obtained from Revenue Department under Right to Information Act, house of plaintiff No.1 is

existing over suit land. He further contended that since the plaintiffs are maintaining their mother, defendant No.1, she could not have sold suit property, as has been clearly stipulated in the Will that in case defendant No.1 is maintained by the plaintiffs, they will get the property.

11. This Court finds no merit in the aforesaid submission of learned Counsel appearing for the plaintiffs because bare perusal of copies of Jamabandis for the years 1982-93 and 2010-2011, reveal that part of suit land comprising of Khasra No. 454, 455, 456, 457, 458, 459 and 460 was owned and possessed by Prema, husband of defendant No.1 and same subsequently came to be inherited by defendant No.1, Lajwanti. Perusal of Jamabandis as referred to above, further reveals that land comprised in Khasra Nos. 399 and 400 was jointly owned and possessed by defendant No.1 alongwith others. As per recital in the Will dated 2.7.1997, placed on record by plaintiffs, late Prema was having one daughter and four sons, besides his wife and he had executed Will since his sons were not serving him and his wife. He bequeathed entire property in favour of his wife, who, after having become absolute owner of the part of suit land, transferred the same to defendants Nos. 3 and 4, for

considerations of Rs.30.00 Lakh and Rs.10.00 Lakh, respectively. No material worth credence has been placed on record by plaintiffs suggestive of the fact that husband of defendant No.1, Prema, had inherited suit land from his ancestors but even if it is assumed that suit land was ancestral in the hands of late Prema, it lost character of ancestral property after having been inherited by defendant No.1 from Prema by way of Will. There is no dispute that plaintiffs have not challenged Will in the present case and as such, they have no right, title or interest over the same.

12. With a view to prove possession over suit land, plaintiffs produced receipts, house taxes receipts, electricity bills, copies of bills issued by I&PH Department in the name of plaintiff No.1 but learned Courts below after having scanned aforesaid document, have recorded that the bills/receipts and even site plan placed on record by plaintiffs, nowhere prove that plaintiff No.1 has constructed any house over the suit land. Though, plaintiff No.1 claimed that he has received information under Right to Information Act that his house is situate over suit land, but aforesaid information never came to be placed on record. Perusal of the Jamabandi as well as copies of sale deeds placed on record

clearly prove that defendants Nos. 3 and 4 are in possession of suit land. Since plaintiffs are not recorded as owners of suit land, they cannot be said to have any prima facie case in their favour nor balance of convenience lies in their favour, as such, this Court finds no illegality or perversity in the judgment and order passed by learned Courts below, which otherwise appear to have been based on proper appreciation of the evidence, be it ocular or documentary.

13. Consequently, in view of above, judgment and order passed by learned Court below are upheld. The petition at hand stands dismissed alongwith all pending applications.

**(Sandeep Sharma)
Judge**

**September 28, 2020
(Vikrant)**

High Court