

**IN THE COURT OF SH. GURDEV SINGH CIVIL JUDGE
(JUNIOR. DIVISION), PATHANKOT.**

Mohinder Singh VS. Mohan Singh

**Application under order 39 rule 1 and 2 CPC along-with section 151
CPC for grant of Temporary Injunction.**

Present: Sh. Kunal Mahajan Advocate for plaintiff.
Sh. R. S thakur Advocate for defendants.

ORDER:

1. This Order of this Court shall dispose of the application filed under Order 39 Rule 1 & 2 read with Section 151 of CPC by the plaintiff. Notice of this application was given to defendants. Defendants filed their written statement and reply through their counsel.

FACTS:

2. Briefly, Plaintiff has averred that he is in exclusive possession of land fully detailed and described in the head note of the plaint. Defendants are sons of his brother. A family partition had taken place wherein the land in question has fallen into the share of plaintiff. However, now defendnats are threatening to interfere into his peaceful possession. Accordingly, request is made to allow the application.

3. Upon notice, defendants appeared through counsel and filed their written statement. It is averred in the written statement that plaintiff has filed the present suit on wrong facts. Plaintiff is having only 87/710 share in the land in dispute. Vide mutation no. 796 he has already sold his share in favour of Sunita Devi wife of Bunty Kumar. Suit of plaintiff is

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not maintainable in the present form. On merits, the averments made in the plaintiff are categorically denied by defendants. Request is made to dismiss the application.

OBSERVATION AND DECISION

4. This court has heard both the counsels for the parties and perused the file, very carefully. It is settled law that whenever a person approaches a civil Court for having an injunction order in his favour he has to establish three basic elements in his case i.e.1. prima-facie case is made out in his favour. 2. That if, an injunction order is not passed, he will face an irreparable loss and injury which cannot be compensated in terms of money. 3. That balance of convenience also lies in his favour.

5. In order to make out prima facie case in his favour plaintiff has placed on record Jamabandi for the year 2016-2017, vide which he has been shown as a co-sharer in the property in question alongwith defendants. On the other hand defendants have also relied upon same Jamabandi wherein mutation no. 796 has been entered through which plaintiff has sold his share to one Sunita. Since as per Jamabandi for the year 2016-17 both the parties are co-sharers in the land in dispute. So as per law laid down in case titled as ***“Bachan Singh Vs. Swaran Singh***

CRA Appeal No. 4549 of 1997 decided on 06th of March 2000”

injunction suit is not maintainable against a co-sharer. In such like circumstances a suit for partition is maintainable. Accordingly present

application stands **dismissed**. However, it is made clear that any observations made by this Court while passing this order shall not have any bearing on the merits of the case.

Pronounced in open court:

Date of Order:22.11.2023

Damini (JW)

(Gurdev Singh, PCS)
Civil Judge (Junior Division)
UID NO. PB00514

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