

IN THE HIGH COURT OF JUDICATURE AT PATNA

Pradeep Kumar Dubey and Ors

vs.

Krishna Gopal Dubey and Ors

First Appeal No.597 of 1999

03 September 2025

(Hon’ble Mr. Justice Khatim Reza)

Issue for Consideration

Whether the suit properties are still joint Hindu family properties or had been partitioned earlier as claimed by contesting defendants. Whether the deed of gift by Mostt. Ganga Devi (daughter of ancestor) is valid as streedhan acquisition or void vis-à-vis plaintiffs. Whether plaintiffs, not being parties to earlier partition suit (1970), are barred by principles of res judicata / estoppel / Order XXIII Rule 3-A CPC. Whether continuous alienation of suit lands during pendency of appeal justifies grant of injunction to preserve subject matter.

Headnotes

Partition suit and presumption of jointness – In Hindu law, presumption is in favour of jointness; burden lies on the party alleging prior partition to prove it. Gift by daughter prior to Hindu Succession Act – Property claimed to be streedhan of daughter not part of coparcenary unless proved otherwise; issue left for final adjudication. Doctrine of lis pendens – Any alienation during pendency of appeal is subject to Section 52 of the Transfer of Property Act, but court’s duty is to preserve subject matter to prevent multiplicity of proceedings. Temporary injunction principles – Grant of injunction depends upon (i) existence of prima facie case, (ii) balance of convenience, and (iii) irreparable injury (Dalpat Kumar v. Prahlad Singh, AIR 1993 SC 276). Purchaser of coparcenary interest – Cannot claim possession; only entitled to sue for partition (AIR 1953 SC 487). Duty of court in pending lis – Once lis is admitted for adjudication, subject matter must be preserved so decree does not become infructuous (2001 (2) PLJR 268). Order on injunction – Both appellants and respondents restrained from alienating, selling, or transferring suit property during pendency of appeal.

Case Law Cited

(2001) 2 PLJR 268; AIR 1953 SC 487; AIR 2005 SC 104; AIR 1993 SC 276, (2011) 9 SCC 451; 2020 SC 823; AIR 1991 Pat 53

List of Acts

Code of Civil Procedure, 1908

List of Keywords

doctrine of lis pendens, Temporary injunction, Prima facie case, Balance of

convenience, Irreparable injury, Res judicata, Estoppel

Case Arising From

From judgment and decree dated 29.09.1999 passed in Title (Partition) Suit No. 127 of 1992 by the learned Sub-Judge-V, Purnea.

Appearances for Parties

For the Appellant/s : Mr. Jitendra Kishore Verma, Adv.

Mr. Arjun Prasad Singh, Adv.

For the Respondent nos. 5 to 13 : Mr. Shashi Shekhar Dwivedi, Sr.

Advocate

For respondent no. 4(ii) : Mr. J. S. Arora, Sr. Advocate,

Mr. Ravi Bhatia, Advocate

Mr. Rakesh Kr., Advocate

Mr. Himanshu Shekhar, Advocate

Headnotes Prepared by Reporter: Ravi Raj, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.597 of 1999

Pradeep Kumar Dubey and Ors

... .. Appellant/s

Versus

Krishna Gopal Dubey and Ors

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Jitendra Kishore Verma, Adv. Mr. Arjun Prasad Singh, Adv.
For the Respondent nos. 5 to 13	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate
For respondent no. 4(ii)	:	Mr. J. S. Arora, Sr. Advocate, Mr. Ravi Bhatia, Advocate Mr. Rakesh Kr., Advocate Mr. Himanshu Shekhar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

78 03-09-2025 Heard, Mr. Jitendra Kishore Verma, learned counsel
for the appellants, Mr. Shashi Shekhar Dwivedi, learned senior
counsel for respondent nos. 5 to 13 and Mr. J.S. Arora, learned
senior counsel for respondent no. 4(ii).

Re: I.A. No. 10 of 2022

2. This interlocutory application has been filed by the appellants under Order XXXIX Rule 1 and 2 read with Section 151 of the C.P.C. for restraining the respondents/opposite parties from selling, transferring, alienating and changing the physical feature of the suit land during pendency of this appeal and also to restrain the purchasers from taking forceful possession over the suit land.

3. The instant First Appeal has been filed by the



plaintiffs/appellants against the judgment and decree dated 29.09.1999 passed in Title (Partition) Suit No. 127 of 1992 by the learned Sub-Judge-V, Purnea, whereby, the learned court below has dismissed the suit holding that there is no unity of title and possession between the parties in respect of the suit land and the plaintiffs are not entitled to their share in the suit properties as claimed for. The plaintiffs/appellants have filed Title (Partition) Suit No. 127 of 1992 against the defendants/respondents for partition of their 2/15 th share in the joint Hindu family property. It was pleaded by the plaintiffs in the plaint that Late Kalika Pd. Dubey was the common ancestor of the plaintiffs and the defendants, who died in the year 1948 leaving behind four sons and two daughters and the daughters of Late Kalika Pd. Dubey did not inherit the suit property as Kalika Pd. Dubey died in the year 1948 before coming into force of Hindu Succession Act, 1956. Out of four sons, eldest son Ram Sharan Dubey died before coming into force of Hindu Succession Act, 1956, leaving behind one son Prabhat Dubey and three daughters. It is further pleaded that the said Prabhat Dubey died issueless and the share of joint family devolved upon three surviving brothers. One daughter Laxmi Narayan Dubey died leaving behind Krishna Gopal Dubey and Kamal



Dubey (defendant nos. 1 and 2). The sons of Krishna Gopal Dubey are the plaintiffs in the present suit and heirs of Prakash Narayan Dubey and Sambhu Dayal Dubey are the defendants. It is further contended that Mostt. Ganga Devi, daughter of Late Kalika Pd. Dubey had no right in the joint family property but she executed registered deed of gift in favour of defendant nos. 8 and 9, who are sons of defendant no. 4, Satya Narayan Dubey, and thereafter, defendant nos. 8 and 9 executed sale deed in favour of defendant 2nd set with respect to the lands of Schedule-B of the plaint without any legal right and the same is *void ab initio*. It is further contended that the plaintiffs and defendants are members of joint Hindu family governed by Mitakshara School of Hindu Law and the family possess very large area of land over which the parties are in joint possession without having any mutual partition by metes and bounds and since the members of the family have increased, it becomes inconvenient for the parties to continue in joint mess and residence and as such parties separated in mess and residence for the sake of convenience but they are joint in cultivation and business. Further, they use to divide crops as per their respective share. But, for all practical purposes, the family of the plaintiffs and defendant 1st party are joint in respect of suit properties and that



defendant nos. 8 and 9 did not acquire any right, title and interest over the Schedule-B land on the strength of registered gift deed. The said gift is not binding upon the plaintiffs and is *void ab initio*.

4. It is further case of the plaintiffs that defendant no. 6, one of the sons of defendant no. 3, filed Title (Partition) Suit No. 292 of 1970 in the court of Sub-Judge-V, Purnea for partition of joint family properties and in that suit the members of branch of Prakash Narayan Dubey and Sambhu Dayal Dubey were only made parties and the plaintiffs and their ancestors were not made party in Title (Partition) Suit No. 292 of 1970. In that suit, the parties of that suit in collusion with each other got the suit compromised and obtained a compromise decree in collusion with each other and the said compromise decree is not binding upon the plaintiffs. It is further pleaded in the plaint that one Mathuri Sah filed Title Suit No. 737 of 1955 in the court of Munsif, Sadar with regard to certain plots of land of joint family property against Prabhat Dubey and others in which Laxmi Narayan Dubey made statement of separation amongst family members but that statement was confined to suit plot involved in that suit and that statement was not an admission of partition of the joint family properties. In the Revisional Survey record of



rights, the joint family properties have been recorded jointly and some properties were recorded in the name of individual members of the family. The plaintiffs demanded partition but the same was refused, hence, the suit for partition arose.

5. On summons, the defendants appeared and filed three sets of written statements, one on behalf of defendant nos. 1 and 2, second on behalf of defendant nos. 3 to 12 and third on behalf of defendant nos. 14 to 17.

6. The defendant nos. 1 and 2 have supported the case of the plaintiffs. It has been admitted that Kalika Pd. Dubey was the common ancestor of the plaintiffs and the defendants and there has been no partition in the past either orally or documentary between the family members of the plaintiffs and the defendant-Ist set. It has been pleaded that Ram Sharan Dubey died prior to 1956 leaving behind Prabhat Dubey and four daughters.

7. Per contra, the case of the main contesting defendant nos. 3 to 12 is that the plaintiffs want a declaration of non-title of Ganga Devi with regard to Schedule-B property and also for cancellation of the deed of gift executed by her which can only be done by specific relief and that too by making payment of *ad valorem* fee provided the limitation permits the



same but the fact is that the suit is barred by limitation. The contesting defendants further pleaded in their written statement that Kalika Pd. Dubey died in the year 1948 leaving behind his four sons and six daughters, not two daughters as pleaded by the plaintiffs. Out of those six daughters, two are still surviving, namely, Sushila Devi and Bilasi Devi. It is further contended that Ram Sharan Dubey died sometime in the year 1956, leaving behind his only son, namely Prabhat Dubey and four daughters. The said Prabhat Dubey died unmarried and the plaintiffs have not given the date of death of Prabhat Dubey in the plaint. Ram Sharan Dubey died living behind his widow Sarwati Devi, who also died in the year 1965 much after coming of publication of the records of right in the year 1958. It is further case of the contesting defendants that Kalika Prasad Dubey partitioned all his landed properties amongst his sons during his lifetime and in that partition Ram Sharan Dubey and Lakshmi Narayan Dubey, the grandfather of the plaintiffs, got separate properties in lieu of their share in the joint family and both of them separated themselves from the entire *Karobar* (business) of the family of Kalika Prasad Dubey. Rest of the two sons of Kalika Prasad Dubey continued in jointness, namely Prakash Narayan Dubey and Shambhu Dayal Dubey. They dealt with their lands as their



own properties and they also sold lands jointly and inducted tenants jointly or separately and also took payment of compensation of money on acquisition of their land. They also surrendered their lands in the ceiling case started against them. It is further case of the contesting defendants that Ram Sharan Dubey after partition sold away his entire properties to different purchasers through different registered deeds of sale and he shifted to Patna with his family members and carried out his own business separately and while doing that business he defaulted in making payment of sales tax to the State Government and for realization of the same, Certificate Case No. 356 of 1951-52 was initiated against the said Ram Sharan Dubey. In that case, the property belonged to the defendants were also attached but on objection raised by the defendants, the same were released in favour of the defendants/objectors. It has been completely false and having been falsely stated that Ram Sharan Dubey died much before the commencement of the Hindu Succession Act, 1956. The mis-leading pleadings of the plaintiffs would be apparent from the fact that one of the daughters of Kalika Prasad Dubey, namely Ganga Devi had filed a Title Suit No. 216 of 1959 against Shambhu Dayal Dubey and others, including Sarwati Devi, wife of Ram Sharan



Dubey and in that suit Prabhat Kumar Dubey was also impleaded as defendant. It is further contended that Prabhat Kumar Dubey had filed his written statement in that suit on 09.05.1959 and in his written statement, it was admitted that Ganga Devi, the daughter of Kalika Prasad Dubey did not inherit any share in the property of her father but Ganga Devi had purchased land of Schedule- B from her own savings and also after disposing of her ornaments through two registered deeds of sale dated 08.04.1946 and since the date of purchase, Ganga Devi remained in possession of those properties as absolute owner. During Survey Operation, the Survey Authority had found that the said property to be of Ganga Devi and accordingly name of Ganga Devi in respect of those properties was entered in the records of right. Some of the properties of Ganga Devi were wrongly recorded in the name of her brother against that she had filed a Title Suit No. 216 of 1959 for correction of the said wrong survey entry in the said suit. The father and grandfather of the plaintiffs had filed the written statement admitting Ganga Devi as exclusive owner of those properties and had stated that they have got no concern whatsoever from the said property of Ganga Devi. It is further pleaded in the written statement that the plaintiffs and defendant



nos. 1 and 2 had no concern whatsoever from the properties of Prakash Narayan Dubey and Shambhu Dayal Dubey nor had any share therein and therefore, they are not included nor were required to be included as party in Title Suit No. 292 of 1970. It is further contended that Laxmi Narayan Dubey had married twice and he died leaving behind his second wife, Smt. Anandi Devi, three sons and one daughter. The wife of Lakshmi Narayan Dubey claimed her share in the property of Laxmi Narayan Dubey and had also preferred Chakbandi Appeal No. 174 of 1980-81 against Krishna Gopal Dubey and Kamla Prasad Dubey. The said claim was allowed as such the said second wife, three sons and daughters are also necessary parties to the suit, who have not been impleaded in the present suit. Hence, the plaintiffs are not entitled to any relief as claimed and the suit is fit to be dismissed.

8. The learned courts below after considering the pleadings as well as documentary and oral evidence held that there is no unity of title and possession in between the parties to the suit and the plaintiffs are not entitled to any relief. The judgment and decree under appeal has been challenged in the present First Appeal by the plaintiffs/appellants.

9. Learned counsel for the plaintiffs/appellants



submits that Late Kalika Pd. Dubey was common ancestor, who acquired about 250 acres of land and the same was to be divided equally among all the sons of Late Kalika Pd. Dubey but some of the properties barring 10-11 acres of land in Mauza Harchandpur, rest land has been in possession of defendants Prakash Narayan Dubey and Sambhu Dayal Dubey to the extent of 250 acres. Learned counsel for the appellants submits that in Hindu law, presumption is of jointness and those who allege, otherwise, has to prove the same but in the present case, the defendants/respondents have miserably failed to prove the factum of partition by metes and bounds. No documents of partition or memorandum of partition has been filed by the defendants in support of their claim. The date of partition has not been disclosed by the said contesting defendants. The plaintiffs name was recorded in the Revisional Survey Khatiyani only with regard to about 11 acres while the defendants have got 250 acres of land in their possession which has to be divided.

10. Learned counsel for the plaintiffs/appellants vehemently submits that the defendants/respondents have executed more than 50 sale deeds out of which appellants have filed 24 sale deeds executed by the defendants/respondents in the present proceeding. If the defendants are not restrained from



selling the suit land during pendency of this appeal, the very purpose of filing this appeal will be frustrated. The learned Trial Court wrongly held that when a partition is proved then it will be presumed that partition was by metes and bounds unless it is rebutted in the evidence by the other side. The genealogy is admitted and partition by metes and bounds is not proved, therefore, plaintiffs/appellants have got *prima facie* case and the balance of convenience lies in maintaining *status quo* i.e., both sides should be restrained from selling the suit land. If the suit lands are sold during pendency of this appeal to strangers then plaintiffs/appellants will suffer irreparable loss and injury.

11. It is further submitted that some of the joint family properties were recorded combined in the name of four persons and the defendants admitted the title of plaintiffs in their written statement, despite that defendants are selling even those lands and recently sold some lands on 15.02.2024. The respondents, namely, Amit Dubey, Nidhi Dubey, Manish Dubey and Himanshu Dubey sold 4 decimals and 183 Karis and further 3 decimals of land has been sold by registered deed nos. 2923, 2922 dated 15.02.2024. It is vehemently submitted that most of lands of combined Khata has been given in ceiling proceeding and rest are being sold.



12. On the basis of above submissions, learned counsel for the appellants has relied upon a decision of this Court in the case of ***Dharam Nath Ojha Vs Raghu Nath Ojha*** reported in ***(2001) 2 PLJR 268***, wherein, this Court has held that if a suit is admitted for adjudication, it is the duty of the court to preserve the subject matter so that the decree may not become a barren at the time of final adjudication.

13. It is further submitted that the fundamental precept of preservation of subject matter of any dispute pending adjudication in a court of law. The very essence of the concept of temporary injunction during the pendency of litigation involving any property is to prevent its threatened wastage, damage and alienation thereto has been caused to the party who may ultimately succeed and which would as well lead to multiplicity of proceedings.

14. Further reliance has been placed by the learned counsel for the appellants in the case of ***Sidheshwar Mukherjee Vs Bhubneshwar Prasad Narain Singh and others*** reported in ***AIR 1953 SC 487***, wherein, the Hon'ble Apex Court has held that if a person has purchased the undivided interest in the joint Hindu family property, he is not entitled to possession of the said purchased property.



15. Reliance has been placed in case of ***Meharwal Khewaji Trust, Faridkot Vs Baldev Dass*** reported in ***AIR 2005 SC 104*** in which the Hon'ble Apex Court has held as follows:-

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."

16. In case of ***Dalpat Kumar and another Vs. Prahlad Singh and others*** reported in ***AIR 1993 SC 276***, wherein, the Hon'ble Supreme Court has interpreted the meaning of *prima facie* case, balance of convenience and an irreparable loss.

17. It is vehemently submitted that the respondents are surreptitiously selling the suit land to defeat the claim of the plaintiffs/appellants even during the pendency of this injunction petition.

18. On the other hand, learned counsel for the contesting defendants/respondents submits that the present appeal is pending since 1999 and during the pendency of the present appeal, the appellants have also dealt with their



properties by describing the same as their exclusive properties by virtue of partition. Similarly, the defendants have also dealt with their properties and one party has got no concern from the properties of the other party. In spite of that, with a view to harass the defendants, the plaintiffs have filed the vexatious suit for partition and they have also filed the present injunction petition in the year 2022. The present suit also includes the self acquired properties of Ganga Devi, who was admittedly not a coparcener and she has already gifted her properties on 07.08.1971 but neither any declaration has been made that those properties are not her *streedhan* nor the deed of gift executed by her has been challenged. The father of the plaintiffs had admitted in earlier litigation that partition has already been affected long back and the principle of estoppel shall continue to apply and hence, the plaintiffs are stopped from pleading, containing contrary to the stand of their father. The plaintiffs being the successors of the defendant no. 2 cannot make a claim, nor can take a stand contrary to what their predecessors had taken in earlier litigation, which is prohibited under the principles of *res judicata*. It is further submitted that the compromise decree passed in Title Suit No. 292 of 1970, which is final and conclusive, has never been challenged nor the same



may be challenged in a separate suit in view of the provisions of Order XXIII Rule 3-A of the Code of Civil Procedure, since the Hon'ble Supreme Court has already decided that a third party to the compromise if feel affected then, he should also approach to the same court for the same but cannot file a separate suit. In the present suit, there is no relief sought for challenging that compromise decree and therefore, granting of any relief in the present suit will amount to allowing an independent and separate decree parallel to the decree of Title Suit No. 292 of 1970 which would be completely contradictory to each other which is impermissible in the eye of law. The plaintiffs/appellants have themselves dealt with the properties by admitting in the recital of the sale deed itself that by virtue of partition already effected among their ancestors and separate *Jamabandi* for their respective land exists. As such their admission also creates estoppel against them to claim the properties as joint family properties. The claim of partition with regard to properties of Ganga Devi which was purchased by her *streedhan*, the provision of Benami Transactions (Prohibition) Act, 1988 is barred. The plaintiffs/appellants have apparently neither *prima facie* case for grant of injunction nor the balance of convenience lies in their favour and grant of injunction, in



fact, will cause serious irreparable loss to the defendants/respondents and on the other hand by non-grant of injunction, the plaintiffs/appellants will suffer no loss at all. Therefore, the application for injunction filed by the plaintiffs/appellants for grant injunction is not at all fit to be allowed.

19. Learned counsel for the defendants/respondents has relied upon a decision in the case of ***Marabasappa (Dead) by LRs. & Ors. Vs. Ningapa (Dead) by LRs. & Ors.*** reported in ***(2011) 9 SCC 451*** wherein, the Apex Court has held that “*the property purchased through streedhan is not liable to be partitioned.*”

20. So far order of Status quo is concerned, he has also relied upon decision in the case of ***Pooja Mittal & Ors. Vs. Rakesh Kumar & Ors.*** reported in ***AIR SCC Online 2020 SC 823***, wherein, the Hon’ble Apex Court has held that “*no order of status quo may be granted if necessary ingredients of injunction are not fulfilled.*”

21. Learned counsel for the respondents has further relied upon a decision in the case of ***Rameshwar Mistry & Anr. Vs. Bebulal Mistry*** reported in ***AIR 1991 Pat 53*** (Paragraph Nos. 36 & 37) with regard to property of women effected under



Benami Transactions (Prohibition) Act, 1988.

22. Considering the rival submissions of the parties and materials available on record, this court finds that it is admitted fact that Late Kalika Pd. Dubey was the common ancestor of the plaintiffs and the defendants. The claim of partition of the plaintiffs was dismissed on the ground that there is no unity of title and possession over the suit land between the parties. Against the said finding, the present appeal has been filed , which is continuation of suit. The case of previous partition as claimed by the contesting defendants was accepted by the Trial Court. There is specific averments made in the injunction petition by the appellants that the respondents have executed more than 50 sale deeds out of which the plaintiffs/appellants have filed 24 sale deeds executed by the defendants/respondents in the present proceeding which has not been denied by the contesting respondents.

23. Further, reliance has been placed by the learned counsel for the appellants in the case of *Sidheshwar Mukherjee Vs Bhubneshwar Prasad Narain Singh and others* reported in *AIR 1953 SC 487*, wherein, the Hon'ble Apex Court has held that "*a purchaser of a coparcener undivided interest in the joint family property is not entitled to possession of what he had*



purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property.”

24. In the case of ***Dharam Nath Ojha Vs Raghu Nath Ojha*** reported in ***(2001) 2 PLJR 268***, this Court has held 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 same is available at the time of final adjudication and the decree doesn't become a barren one*”. The main question involved in the present appeal is whether the property in suit is joint family property or not and whether the sale deed in favour of Ganga Devi is the property purchased through her *streedhan*. This issue has to be decided in the final adjudication of the appeal.

25. In the case of ***Dalpat Kumar (Supra)***, the balance of convenience and irreparable loss have been interpreted by the Apex Court. It is duty of the court before granting the injunction to look to the conduct of the parties, the probable injuries to either party and whether the plaintiff could be adequately compensated if injunction is refused. At present there are several sale deeds executed by the defendants and also during the pendency of this injunction petition. It is true if any alienation is made, it would be subject to doctrine of *lis pendens*



under Section 52 of the Transfer of Property Act. The Hon'ble Supreme Court in case of ***Dalpat Kumar (Supra)*** has held that *“the court in exercise of power of granting an ad interim injunction has to preserve the subject matter of the suit by the Status quo for the time being. It is further held by the Apex Court that 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 substantial question raised, bona fide, which needs investigation and a decision on merits. Irreparable injury, however, doesn't mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely that one cannot be adequately compensated by way of damages.”* It is further held that the phrases “*prima facie case*”, “*balance of convenience*” and “*irreparable loss*” are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances but always is hedged with sound exercise of judicial discretion to meet the ends of justice. Further, it is held that the Court in exercise of power of granting an *ad interim* injunction has to preserve the subject matter of the suit by the *status quo* for the time being.



26. In view of the aforesaid decisions, materials on record and conduct of the parties, both the parties be directed to restrain from alienating and transferring the suit property during the pendency of the appeal.

27. Accordingly, I.A. No. 10 of 2022 is allowed.

(Khatim Reza, J)

prabhat/-

U			
---	--	--	--

