

## Rajan Xalxo Vs Anil Antoni Kachhap @ Munda

**Court:** Jharkhand High Court

**Date of Decision:** Feb. 5, 2025

**Acts Referred:** Code of Civil Procedure, 1908 " Section 151, Order 39 Rule 1

Chota Nagpur Tenancy Act, 1908 " Section 46

Specific Relief Act, 1963 " Section 36

**Hon'ble Judges:** Sanjay Kumar Dwivedi, J

**Bench:** Single Bench

**Advocate:** Surya Prakash, Rahul Kumar Gupta, Manish Kumar, Nirupama

**Final Decision:** Dismissed

### Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Surya Prakash along with Mr. Rahul Kumar Gupta, learned counsel for the petitioner and Mr. Manish Kumar, learned counsel for the

State.

2. This petition has been filed under Article 227 of the Constitution of India praying therein to quash the order dated 30.11.2024 passed by the learned

Judicial Commissioner, Ranchi, whereby, the appeal being Civil Miscellaneous Appeal No.8 of 2024 filed by the petitioner challenging the rejection of

petition filed under Order XXXIX Rule 1 read with Section 151 of the CPC in connection with Original Title Suit No.571 of 2023 by the learned Civil

Judge (Jr. Division), Ranchi, has been rejected.

3. Mr. Surya Prakash, learned counsel for the petitioner submits that the recorded raiyat sold and transferred the land of 2.40 acres under Khata

No.91, Khewat No.2 being R.S. Plot No.375, 895, 896 and 1106 of Village Morabadi, Tetartoli, P.S. Bariatu, Revenue P.S. No.792, District- Ranchi

by virtue of registered deed of sale dated 03.10.1958 after taking permission under Section 46 of the Chhotanagpur Tenancy Act vide Case No.64R

08.11.1957-58 in favour of Chamna Munda and put him in khas and effective possession of the same and, thereafter, Chamna Munda acquired valid

right, title, interest and possession over the aforesaid land. He then submits that Chamna Munda and his son, namely, Simon Kachhap executed a

registered agreement on 28.01.1989 in favour of Emmanuel Xalxo being the father of the plaintiff/petitioner for sale and transfer of the land under

Khata No.91, Plot No.375, 895, 896 and 1106, total area 1.20 acres out of 2.40 acres of Village-Morabadi, Tetartoli, P.S. Bariatu, District- Ranchi. He

further submits that since the agreement dated 28.01.1989 was not complied with, the suit for specific performance was filed, which is still pending

and they are trying to sold the land to other persons and in view of that, the petition under Order XXXIX Rule 1 of the CPC was filed and the learned

Court on erroneous ground has rejected the same vide order dated 29.06.2024. He submits that the order dated 29.06.2024 was challenged before the

learned Judicial Commissioner, Ranchi in Civil Miscellaneous Appeal No.8 of 2024, which was further rejected vide judgment dated 30.11.2024. He

submits that both the learned courts have erred in not considering that the petitioner will suffer irreparable loss and, as such, both the orders may

kindly be quashed and the petition filed under Order XXXIX Rule 1 read with Section 151 of the CPC may kindly be allowed.

4. Mr. Manish Kumar, learned counsel for the State submits that there is no illegality in the order. He submits that contradictory stand has been taken

by the petitioner; on the one hand he is in possession and on the other hand, the petitioner is making out the case that other side is trying to take over

the possession of the suit property.

5. In view of the above, the Court has gone through the judgments of both the courts. The learned appellate court has found that the stand was taken

by the plaintiff/petitioner that the defendants/respondents are carrying construction over the suit property and the petitioner has not produced any

photograph and convincing evidence to suggest that the defendants/ respondents are carrying construction over the suit property and in view of that,

no prima facie case was found in favour of the plaintiff/petitioner before both the courts. The plaintiff/petitioner has admitted that the defendants/

respondents are in possession of the suit land and in view of that, the learned court has found that balance of convenience is also not in favour of the

plaintiff/petitioner. The case of irreparable loss is also not made out as the petitioner was not able to show that if injunction is not granted in his favour,

it cannot be compensated in terms of money and in above three ingredients, the plaintiff/petitioner has failed to make out the case of injunction in light

of Order XXXIX Rule 1 of the CPC.

6. It is well settled that in suit of specific performance, the plaintiff will have to establish strong prima facie case on the basis of undisputed fact and

the conduct of the plaintiff is also one of the considerations for the purpose of injunction. The discretion at this stage has to be exercised judiciously

and not arbitrarily. A reference may be made to the judgment passed by the Hon'ble, Supreme Court, in the case of, Ambalal

Sarabhai Enterprise Limited v. K S Infraspace LLP Limited and another and in analogous cases, reported in (2020) 5 SCC 410, wherein, at

paragraphs 15 and 16 it has been held as under:

“15. Chapter VII, Section 36 of the Specific Relief Act, 1963 (hereinafter referred to as the Specific Relief Act, 1963) provides for grant of preventive relief. Section 37

provides that temporary injunction in a suit shall be regulated by the Code of Civil Procedure. The grant of relief in a suit for specific performance is itself a

discretionary remedy. A plaintiff seeking temporary injunction in a suit for specific performance will therefore have to establish a strong prima-facie case on basis

of undisputed facts. The conduct of the plaintiff will also be a very relevant consideration for purposes of injunction. The discretion at this stage has to be

exercised judiciously and not arbitrarily.

16. The cardinal principles for grant of temporary injunction were considered in Dalpat Kumar v. Prahlad Singh, observing 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 noninterference 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.”

7. What has been discussed hereinabove, it transpires that the petitioner has failed to make out necessary case with regard to the petition under Order

XXXIX Rule 1 read with Section 151 of the CPC and both the courts have rightly passed the orders. There is no illegality in the impugned order and,

as such, no case of interference is made out.

8. Accordingly, this petition is dismissed.

9. Pending I.A., if any, is disposed of.