

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8988 of 2015

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Mahendra Singh Son of Late Yugal Singh, Residents of Village - Mahna,
P.S. - Siknandara, District - Jamui. **-Plaintiff-Respondent-Petitioner.**
Versus

1. Tanik Singh
2. Devendra Singh,
3. Ajay Singh,
4. Sanjay Singh,
5. Santosh Singh All Sons of Late Sitaram Singh.
6. Shyam Singh,
7. Binod Singh, Both Sons of Late Kishun Singh
8. Ashok Singh,
9. Madan Singh Both Sons of Late Battan Singh.
10. Raj Kumar Singh
11. Sunil Singh
12. Kamlesh Singh All Sons of Late Mishri Singh.
13. Upendra Singh
14. Surendra Singh
15. Kunti Singh,
16. Mahesh Singh,
17. Anil Singh, All Sons of Late Baleshwar Singh, All residents of village
- Mahna, P.s. - Siknandara, District - Jamui.

-Defendants-Appellants-Respondents.

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

3 12-08-2015 Heard the learned counsel for the petitioner as well as
the learned counsel for the respondents.

The order passed in appeal, in injunction matter reversing the order of the trial court, is under question in this application filed under Article 227 of the Constitution of India by the plaintiff-petitioner.

The plaintiffs filed the suit for declaration of title over the suit land and for grant of injunction restraining the defendants



from interfering in possession of the plaintiffs over the suit land during the pendency of the suit. The plaintiffs have claimed their title over the suit land comprised in area 5 decimals in Plot No.919 with the assertion that they have got the said plot in exchange with the defendants after giving their Plot No.955 to the defendants. The defendants in their written statement have denied the claim of the plaintiff. During the pendency of the suit the plaintiffs filed a petition for grant of injunction restraining the defendants from interfering in peaceful possession of the plaintiffs. The defendants filed their rejoinder to the said petition.

The trial court after hearing the parties and considering the materials on record, by order dated 28.05.2013 allowed the prayer for injunction directing both the parties to maintain status quo over the suit land during the pendency of the suit and further directing both the parties not to make any new construction nor any interference. Both the parties were further directed to lead their evidence continuously.

It would be pertinent to notice here that a pleader commissioner was appointed in the suit to make local inspection of the suit land with regard to the existence/status of the construction made thereupon. The said pleader commissioner submitted his report of local inspection and from the perusal of the

ordersheet of the trial court (Annexure-6) it transpires that the defendants filed their objection to the report dated 08.05.2013 of the pleader commissioner on 28.05.2013 when the trial court had already allowed the prayer of the plaintiff for injunction.

The defendants filed civil miscellaneous appeal against the order granting injunction. The appellate court below by the impugned order dated 18.05.2015 has allowed the appeal and overturned the order of injunction passed by the trial court.

The interlocutory application (I.A.No.5417/2015) has been filed on behalf of the petitioner praying for addition of the remaining plaintiffs of the suit as party respondents in this appeal. The learned counsel for the petitioner has submitted that the remaining plaintiffs may be added as proforma respondents in this application.

After hearing the parties, the interlocutory application (I.A.No.5417/2015) is allowed and the persons (plaintiffs) as named in paragraph-5 of the interlocutory application are added as proforma respondents in this writ application.

The learned counsel for the petitioner, while questioning the legal pregnability of the impugned order, has submitted that after finding that the plaintiffs have got good prima facie case and further finding that the report of the pleader

commissioner cannot be discarded, the appellate court below has wrongly come to the conclusion that the ingredients of balance of convenience and irreparable loss are not in favour of the plaintiffs. It has been pointed out that the defendants have nowhere claimed to be making construction over the suit land and the said aspect has also been taken into notice by the trial court but ignoring the said aspect, the appellate court below has wrongly come to the conclusion that the construction of the house over the suit land would not cause irreparable loss to the plaintiff. It has been further propounded that the appellate court below after recording the conclusion that no finding can be given at the stage of grant of injunction with regard to the validity and legality of the case of oral exchange as pleaded, has however further held that the balance of convenience does not lie in favour of the plaintiff because there is no documentary proof of exchange. Elaborating his submissions, the learned counsel has posited that the pleader commissioner's report clearly mentions the existence of prevailing tension over the disputed land and possibility of bloodshed and damage but the appellate court below has also not considered the same even when the trial court has taken into notice the said part of the report also before passing the order on the prayer of injunction as made by the plaintiffs. The learned counsel has lastly

prayed that by the order passed by the learned trial court, none of the parties are likely to suffer irreparable loss or injury and according to the well settled principles the status quo over the suit property during the pendency of the suit is required to be maintained.

The learned counsel for the defendant-respondents on the other hand, has submitted that the plaintiffs have come before the court with entirely false case of getting the Plot No.919 in exchange from the defendants. It has been urged that the defendants never exchanged the Plot No.919 with the plaintiffs Plot No.955 and in any view of the matter it was only Plot No.789 which was the subject matter of exchange by one of the cosharers of the defendants in lieu of the plaintiffs of Plot No.955. While supporting the impugned order it has been contended that the appellate court has applied the correct principles before declining the prayer of the plaintiff for grant of injunction and setting aside the order of the trial court in this regard. It has been submitted that the defendants are residing over their homestead Plot No.919 and grant of any interim order as prayed, would cause irreparable loss or injury to the defendants.

The learned counsel for both the parties have placed the pleadings as well as the report of the pleader commissioner in

extenso to persuade this Court to accept their respective line of submissions.

From the perusal of the impugned order, it is limpid that the learned appellate court below has recorded the specific finding that the plaintiff has got good prima facie case and has further opined that no finding can be given at this stage with regard to the plea of title and possession of the plaintiff on the basis of oral exchange which is in issue in the original suit. The learned appellate court below has further also come to the conclusion that the report of the pleader commissioner is not fit to be discarded. It is also evident from the order passed by the trial court that after taking into notice the averments made in the written statement by the defendants it has been found that the defendant no.10 is in possession of the Plot No.955(admittedly belonging to the plaintiffs) after construction of his house. The trial court has also taken into notice the report of the pleader commissioner showing existence of a half constructed house over the suit plot and the chance of bloodshed and loss of human life due to the seriousness of the controversy between the parties over the suit land and has ultimately passed the order restraining both the parties from making any construction over the suit plot and directing them to maintain status quo during the pendency of the

suit.

It does not appear from the impugned order that the learned appellate court below has taken into notice the reasonings assigned by the trial court while disposing of the injunction petition directing the parties to maintain status quo. It also does not appear to reason as to how after concluding that the issue of oral exchange cannot be determined at the stage of grant of injunction, it has been held that the balance of convenience does not lie in favour of the plaintiffs as no documentary proof of exchange has been adduced. It would be profitable here to reminisce the poignant observation of the Privy Council in ***Mt.Fakrunisa Vs. Moulvi Izarus, AIR1921 P.C.55*** as follows:

“...In every appeal it is incumbent upon the appellants to show some reason why the judgment appealed from should be disturbed; there must be some balance in their favour when all the circumstances are considered, to justify the alteration of the judgment that stands.....”

While laying down the principles relating to the scope of interference by the appellate court with the order of the trial court granting injunction the apex court in the case of ***Sree Jain Swetambar Terapanthi Vs Phundan Singh ,(1999) 2 SCC 377***

has ruled as follows:

“...It may be pointed out that it is one thing to conclude that the trial court has not recorded its prima facie satisfaction on merits but granted the temporary injunction and it is another thing to hold that the trial court has gone wrong in recording the prima facie satisfaction and setting aside that finding on the basis of the material on record because it has not considered the relevant material or because it has erroneously reached the finding or conclusions on the facts established. In the first situation, the appellate court will be justified in upsetting the order under appeal even without going into the merits of the case but in the second eventuality, it cannot set aside the impugned order without discussing the material on record and recording a contrary finding...”

The grant or refusal of temporary injunction rests on the sound exercise of discretion by the trial court and the jurisdiction of the appellate court in appeal under Order 43 Rule 1 C.P.C. to interfere with such order is circumscribed by the

condition that the such exercise of discretion by the trial court must appear or established to be unreasonable or capricious. The possibility of a different view by the appellate court may not justify interference with the trial court's exercise of jurisdiction. The appellate court in such cases normally should not substitute its own exercise of discretion then that of trial court unless the above preconditions exist. Tested on the anvil of these well settled dictums , it is manifest that while passing the impugned order the appellate court below has not recorded the necessary finding that the trial court has exercised its jurisdiction unreasonably, capriciously or ignoring relevant facts or committing material irregularity.

For the aforesaid reasons and discussions, there is no cavil that the impugned order is erroneous and deserves to be overturned. Accordingly, this writ application is allowed and the impugned order (Annexure-7) is quashed. The matter is remitted back to the appellate court below for reconsideration and passing a fresh order in accordance with law after hearing the parties.

(V. Nath, J)

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