

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.511 of 2011

=====

Sanjay Kumar Singh son of Sri Baikunth Singh resident of village Jaiber, P.S. Gaurichak (Phulwari) Post office Nadghat, Patna at present residing at Piparakala, P.S. Narhi, Balia (UP).

....Petitioner/Appellant/Plaintiff no.2-petitioner
Versus

1. Abha Singh daughter of late Surveshwar Singh and wife of Anil Kumar Singh resident of Near Kurji Hospital, Anil Medical Hall, P.S. Digha, Patna
2. Pratibha Singh, daughter of Late Surveshwar Singh and wife of Priya Ranjan Singh resident of Sheikhpura near CRPF Office, P.S. Sheikhpura, Patna
3. Sandhiya Singh D/o of Late Surveshwar Singh and wife of Ranjan Singh
4. Chanchal Singh D/o Late Surveshwar Singh and wife of Mukesh Singh
5. Juhi Singh D/o Late Surveshwar Singh
6. Gaurav Kumar Singh son of Late Surveshwar Singh at present residing at Mohalla Bakerganj, Gola Road P. O. Bankipore, P.S. Pirbahore, Patna all residents of village Fatehpur, P.S. Didarganj, Patna

..Respondents/substituted defendant nos. 1 to 1E

7. Madhuendra Singh son of Late Ramanand Singh resident of village Fatehpur, P.S. Didarganj, Patna at present residing at Mohalla Bakerganj Gola in front of OmPan Shop P.O, Bankipore, Patna
8. Bimla Devi W/o Devendra Singh village Nandiha Nawadihan P.O. Rahimpur and P.S. Sonapur, Chhapra, at present residing at Duplex 186, Vastu Bihar, Baliguma P.S. Mangocity Jamshedpur,
9. Malti Devi D/o Late Rama Nand Singh W/o of Bashishth Singh village Kesopur P.S. Dharahara and P.O. Kesopur, Ara, sector VI Qr. No. 1135, B.S. City Bokaro

...Respondents/Substituted Defendant nos. 2b to 2d

10. Rewat Narayan Singh son of Late Ram Saran Singh resident of village Bajidpur P.S. PUnpun, Patna at Present Ashok Nagar Road No. 10. P.S. Kankarbagh, Patna

... Respondent/Defendant no.3

11. Smt. Phul Kumari W/o Sri Chanderdeo Singh and daughter of late Ram Prasad Singh resident of village Jaiber P.O. Nadghat P.S. Gaurichak, Patna

...Respondent /Defendant no.4

12. Sri Raghvendra Singh son of late Ram Chandra Singh
13. Sri Sailendra Kumar
14. Sri Dhurvenath Singh both sons of Sri Raghuvendra Singh all are residents of village and P.O. Fatehpur P.S. Didarganj, Patna
15. Smt. Sulochana Devi W/o Sri Baikunth Singh and daughter of late Ram Prasad Singh resident of village Jaiber P.S. Gaurichak(Phulwari) P.O. Nadghat, Patna

...Respondent /Plaintiff no.1-O.P.

=====

Appearance :

For the Petitioner/s : Mr. Satya Ranjan Sinha

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

7 11-08-2015

Heard Mr. Rajendra Narain the Sr. Counsel in support of the writ application.

In spite of notice on respondent nos. 1 to 6 no one has appeared to contest the case inasmuch as no counter affidavit has been filed.

The mother and son jointly filed a title suit being Title Suit No. 64 of 1993 for declaration of right, title and interest in the subject land as also for recovery of possession. The suit land comprised of two plots namely plot no. 1360 (80 decimals) and plot no. 1342 (3.16 acres). An application under Order 39, Rules 1 and 2 CPC was filed for restraining the defendant-respondent(s) from alienating the suit property and/or changing the physical feature(s) thereof. The trial court, considering the pleadings of the parties as also the order which was passed between them under section 145 of the CPC, rejected the same on 29.09.2008. The said order was appealed against by the plaintiff vide M.A. No.44 of 2008. The appellate court concurred with the order passed by the trial court. In other words, the prayer for injunction was rejected. The present writ application assails those two orders of the trial court and the appellate court.



It has submitted that the defendant(s) are trying to alienate the property which is the subject matter of the suit land. Some alienation have already been made. The purchaser(s) are undertaking construction of a building over the part/portion of the suit land. He, therefore, strenuously contended that the subject matter of the suit should be protected. In case the suit is allowed in favour of the plaintiff it will be nothing but a bag of litigations. Avoiding multiplicity of litigations is also a relevant consideration while considering grant of such relief. He has relied in this regard on the case of **Maharwal Khewaji Trust (Regd) vs. Baldev Dass since reported in (2004) 8 SCC page 488** wherein the Apex Court considering the matter akin to the present one held as under in paragraph 10:-

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. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting



up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.

Regard being had to the principle enunciated therein as also considering the submissions made by the counsel for the petitioner coupled with the facts appearing from the records, this Court is persuaded to invoke the writ jurisdiction under Article 227 of the Constitution of India to pass the following order:-

Until further orders of the trial court, both the parties shall not alienate/transfer or create any encumbrance in relation to the suit land. The physical features of the suit land shall not be altered/changed substantially without taking a leave in this regard from the trial court. In other words, the status quo, as existing today over the suit land shall be maintained by the plaintiff(s) as well as the defendant(s). The application of the plaintiff for grant of injunction is

allowed in the aforesaid terms.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

HR/-

U			
---	--	--	--

