

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.530 of 2012

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1(A).Ajeet Kumar Roy (husband of deceased sole appellant).
1(B) Apoorva Bhargav (eldest daughter of sole appellant)
1© Aahna Bhargav (minor YKounger daughter of deceased sole appellant)
1(D)Augustya Bhargav, minor younger son of deceased sole appellant).
All minors are under the guardianship of their father Ajit Rai.
All R/O Mohalla- Ashram Prasad, Ward No. 15, Within The Limits Of
Araria Municipality, P.S- Araria, District- Araria.

.... Appellant/s

Versus

1. Khem Karan Begwani S/O Late Hansraj Begwani Resident Of Ward No. 23, Within Limites Of Araria Municipality Mohalla- Hatia Road, P.O, P.S- And District- Araria.
2. Lalit Begwani S/O Late Hansraj Begwani Resident Of Ward No. 23, Within Limites Of Araria Municipality Mohalla- Hatia Road, P.O, P.S- And District- Araria.
3. Rajesh Begwani S/O Late Hansraj Begwani Resident Of Ward No. 23, Within Limites Of Araria Municipality Mohalla- Hatia Road, P.O, P.S- And District- Araria.
4. Most. Manju Devi W/O Late Kali Charan Begwani Resident Of Ward No. 23, Within The Limits Of Araria Municipality Mohalla Road, P.O, P.S And District- Araria.
5. Paras Begwani S/O Late Kali Charan Begwani Resident Of Ward No. 23, Within The Limits Of Araria Municipality Mohalla Road, P.O, P.S And District- Araria.
6. Sunil Begwani S/O Late Kali Charan Begwani Resident Of Ward No. 23, Within The Limits Of Araria Municipality Mohalla Road, P.O, P.S And District- Araria.
7. Most. Kamla Devi W/O Tej Karan Begwani Resident Of Mohalla- Hatia Road, Ward No. 23, Within The Limits Of Araria Municipality, P.O, P.S And District- Araria.
8. Notesh Begwani S/O Late Tej Karan Begwani Resident Of Mohalla- Hatia Road, Ward No. 23, Within The Limits Of Araria Municipality, P.O, P.S And District- Araria.
9. Navin Begwani S/O Late Tej Karan Begwani Resident Of Mohalla- Hatia Road, Ward No. 23, Within The Limits Of Araria Municipality, P.O, P.S And District- Araria.
10. Jamboo Begwani S/O Late Tej Karan Begwani Resident Of Mohalla- Hatia Road, Ward No. 23, Within The Limits Of Araria Municipality, P.O, P.S And District- Araria.
11. Sri Om Prakash Gupta S/O Late Kedarnath Gupta Resident Of Mohalla- Hanumant Nagar, Ward No. 17, Within The Limits Of Araria Municipality, P.O, P.S & District- Araria.
12. Sabi Ahmad S/O Late Wasiuddin Resident Of Village- Bhansia, P.S- Mahalgaon, (Jokihat) District- Araria.
13. Saftah Alam @ Saftah Ahmad S/O Late Wasiuddin Resident Of Village- Bhansia, P.S- Mahalgaon, (Jokihat) District- Araria.
14. Vedanand Sas S/O Late Dwarika Lal Das Resident Of Village- Kamalpur, P.S- Raniganj, District- Araria, At Present Resident Of Rahika Tola Ward No. 8/17, District- Araria.
15. Ajay Kumar Das S/O Late Dwarika Lal Das Resident Of Village- Kamalpur, P.S- Raniganj, District- Araria, At Present Resident Of Rahika

Tola Ward No. 8/17, District- Araria.
16. Puspa Devi W/O Deepak Poddar Resident Of Mohalla- Shivpuri, P.O,
P.S & District- Araria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binod Kumar Singh, Adv.
Ms. Vagisha Pragya Vachknavi, Adv.
For the Respondent/s : Mr. T.N.Matin, Sr. Adv.
Mr. Manish Kumar, Adv.
Mr. Z.Qamar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

15 02-09-2015

Heard learned counsel for the appellant and the
respondents.

In the present case, appellant is challenging the order
dated 26th April 2012 passed by Sub-ordinate Judge-I, Araria in
T.S. Case No. 128 of 2009 whereby and whereunder the court
below has refused to grant ad interim injunction in favour of
appellant.

From the record it appears that the appellant has
purchased 20 decimals of land through registered sale-deeds dated
17th February 2009 and 30th March 2009 from Saftah Alam and
Sabi Ahmad and came in actual physical possession over the
same and after some time made construction over the land bearing
CS Khata No. 511, CS plot No.5805 which originally belonged to
Sk. Abdul Salam and others who are recorded in the record of
rights.

As per claim of the appellant, Mahfazur Rahman



and others were Khebat dar and the total area of CS plot no. 5805 is 27 acres 90 decimals which was acquired by father of the vendor of the plaintiff-appellant in the auction sale in Rent Execution Case No. 48 of 55 which was filed against Mahfazur Rahman and others. The execution case was filed on the basis of rent decree passed in Rent Suit No. 804 of 1952 Sk. Wasiuddin (father of the vendor of the plaintiff-appellant) and Mansoor Alam had jointly purchased the entire land of CS plot no. 5805. Accordingly, after confirmation of sale dated 19th March 1956, sale certificate was issued in their favour. On the basis of sale certificate the court of Munsif, Araria delivered possession of land in favour of auction purchaser on 8th September 1957. From that date, the auction purchaser remained in peaceful possession over the land in dispute.

In the revisional survey CS Plot no. 5805 was split into RS plot No. 9792(part) and 9793 (Part). RS Plot No. 9792 was created from CS plot Nos. 5805, 6061 and 6062. Accordingly the land was recorded in the name of Mahfazur Rahman and others and also in the name of Tolaram Banthia. In spite of that Wasiuddin and Mansoor Alam continued in physical possession over the entire land of CS plot no. 5805 under CS Khata No 511 and never any one challenged the right, title and possession over the land. In the Revisional Survey of Municipality, wrongly, the

names of Hansraj Begwani and Phusraj Begwani were entered in the revenue record but neither they were owner of the suit land nor they were in possession of the same. Claim has been made by the appellant that the municipal survey entry made in respect of the suit property is false, fabricated and not sustainable in law

It has further been claimed that with the connivance of Defendant 2nd set, the defendant respondents who are heirs and descendants of Hansraj Begwani and Phusraj Begwani are trying to usurp his property. As per claim of the appellant, the original appellant who is wife of present appellant has constructed two pucca rooms with tin roof with latrine and bath-room and fixed the iron gate after fencing the boundary. It is further alleged that with the help of local Police, they dispossessed the appellant with the help of their henchmen. In pursuance thereof, the original appellant and the present appellant were arrested, put behind bars and the gate was locked. After the release, the appellant approached the Police to register criminal case against the defendant 1st set but Police refused to register the case. Ultimately Complaint Case No. 2276 of 2009 was filed which is pending for consideration.

The respondents in their written statement have taken a plea that Abdul Salam was the landlord of aforesaid plots whereas Mahfoozur Rahman, Ziaur Rahman and Mojibur Rahman



were the owners of the land. Mahfoozur Rahman, Ziaur Rahman and Mojibur Rahman had $\frac{1}{3}^{\text{rd}}$ share each. Mahfoozur Rahman was ailing person, his share was looked after by one Bhola Miyan and after death of Mojibur Rahman his son Shafiqur Rahman got $\frac{1}{3}^{\text{rd}}$ share of his father. His share was auction sold in a money suit filed by Dalamchand and others who later on purchased it in an auction sale in Misc. Case No. 219 of 1931. In the partition suit against Mahfoozur Rahman and Ziaur Raman, being Partition Suit No. 54 of 1933, obtained the preliminary decree of $\frac{1}{3}^{\text{rd}}$ share from 27 acres 90 decimals and thereafter Dalamchand Banthia and his co-sharers and Tolaram Banthia partitioned the land and thereafter Tolaram Banthia sold 0.64 decimals to Bhikamchand Bhutoria who in turn sold it to Rajedshwari Devi an area of 0.21 decimals by deed No. 14381 dated 9th November 1970 upon which godown was constructed surrounded by boundary wall which was mortgaged to Hansraj and Phusraj and later on the property in question was sold to Khemkaran Begwani and Khemkaran Begwani filed Eviction Suit No. 8 of 1979-80 and, accordingly, came in possession over the land.

Counsel for the appellant submits that the entire land was purchased by his vendor and from him he had purchased the land. Thereafter construction has been made, illegally expelled from the property in connivance of local police and the gate was

locked.

He further submitted that in view of changed circumstances, He is not claiming that possession should be restored in his favour but the feature of the land and construction should remain unchanged so that whoever will win the suit will enjoy the property in question. He has further submitted that in the auction sale, his vendor had purchased the entire land of CS plot no. 5805 but wrongly and illegally the defendants have entered their names in the revenue records though all through his vendor was in possession and thereafter the appellant came in possession. In support of his contention, he has relied upon 2001(2) PLJR 268 (Para-9) and (2004)8 SCC 488.

Counsel for the respondents submitted that there is no clash of interest in between the parties. The reason is that admittedly the appellant had purchased the land of plot no.9792 which is part of CS Plot no. 5805 whereas the respondents purchased the land of RS Plot no. 9793 is apparent from the sale deed produced before this Court by the respondents. He has also produced the photo copy of survey entry where in respect of RS plot no. 9793 the name of Tolaram Banthia has been mentioned and they submitted that the appellant illegally wants to take the property in question.

Having considered the rival contention of the parties,

the admitted fact is that as on to-day the prayer of the appellant is for his declaration of title and recovery of possession which itself shows that the appellant is not in possession of the land in question but he has sought a relief of maintaining status quo with respect to the land in question. From the sale-deed and other records it appears that the respondents had purchased the land in the year 1977. The name of vendor of respondents, namely, Tolaram Banthia is recorded in the revenue record. Respondents are in possession of property. It will be an unjust order of this Court to restrain the respondents to use his property with restrain and maintain status quo. Admittedly the sale-deed shows what appellant has purchased is confined to plot no. 9792 and plot No..9793 purchased by the respondent. In such view of the matter, this Court does not find any error in the order of the court below.

This appeal is dismissed.

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(Shivaji Pandey, J)