

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19376 of 2011

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1. Rajan Kumar Son Of Late Krishna Nand Prasad Resident Of Mohalla:-Ganj
No.2, P.O. And P.S.: -Bettiah Town, District:-West Champaran. Petitioner/s
Versus

1. The State Of Bihar.
2. The District Magistrate, West Champaran At Bettiah, District:-West Champaran.
3. The Deputed Magistrate (Raj Kishore Singh), Bettiah, District: West Champaran.
4. The Sub-Divisional Officer, Bettiah (Sadar), District:-West Champaran.
5. The Officer-In-Charge, Bettiah (Town) Police Station, District:-West Champaran.
6. Narendra Singh Baweja Son Of Late Darshan Singh Baweja Resident Of
Mohalla:-Lal Bazar, Garudowara Road, Bettiah, P.O. And P.S.: -Bettiah Town,
District:-West Champaran.
7. Paramjeet Kumar Wife Of Narendra Singh Baweja Resident Of Mohalla:-Lal
Bazar, Garudowara Road, Bettiah, P.O. And P.S.: -Bettiah Town, District:-West
Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Jha
For the Respondent/s : Mr. Mahesh Narayan Parbat, Sr. Advocate
Mr. Arun Kumar Sinha,
Mrs. Nutan Sahay, A.C. to G.A.-5

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 07-12-2015

Heard Mr. Ranjan Kumar Jha for the petitioner and Mr.

Arun Kumar Sinha for respondent nos. 6 and 7. A counter affidavit
has been filed on behalf of the contesting respondents.

Challenge in this writ application is to the notice dated
21.10.2010 (Annexure-2) issued by the Magistrate on duty directing
the petitioner to vacate the shop (premises) and also for a direction
upon the respondents not to disturb the peaceful possession of the
petitioner over the shop in question.

Factual matrix of the case is as under:-



The property involved is a shop situated in Lal Bazar adjacent to Mani Bazar. According to the writ petitioner, the said shop belonged to Rajeshwar Yagnik. On his death, Anjana Yagnik (widow) and his son inherited the same. The son executed a power of attorney in favour of mother Anjana Yagnik in respect of the subject property. The petitioner was a tenant of the shop. He negotiated with Anjana Yagnik who sold the same in favour of another person on 8.10.2001. While in need of money, purchaser negotiated with the petitioner for sale of the shop and the land appertaining thereto and an agreement was reached after payment of earnest money. Possession of the subject property was given to the petitioner. The petitioner started construction on the plot. Having found objection in doing so, a suit was filed by the petitioner vide Title Suit No. 127 of 2003 for specific performance of contract. The same was contested by the defendants-respondents stating that the payment so made to Anjana Yagnik was the payment of rent in advance for tenancy for a fixed period of 20 months. The learned Sub-Judge-III, Bettiah dismissed the suit of the petitioner whereagainst F.A. No. 146 of 2011 was filed before this Court which is pending hearing. In the meanwhile, an execution proceeding was levied by the defendants. In this background, the notice was issued to the petitioner by the Magistrate on duty so deputed by the administration which has been impugned in the writ

petition.

The case of the respondents is that they are owners of the shop having an area of 23' X 11'.8" on the basis of purchase thereof from the original landlord Late Rajeshwar Yagnik under a registered sale deed dated 8.10.2001. Adjacent thereto, the writ petitioner and his brother had shops in the said market. On request by the petitioner, the subject shop was allowed to be used by the writ petitioner on payment of rent in the sum of Rs. 5,000/- per month and the rent for the fixed period authorizing use of shop in the sum of Rs. one lac was paid in advance. After expiry of the period of 20 months, the petitioner vacated on 31.5.2003 and the respondents came in possession thereof and put the lock. Subsequently, the petitioner filed Title Suit No. 127 of 2003 for grant of decree of specific performance of contract on false and concocted allegations of having orally contracted to purchase the shop. After filing of the suit, the petitioner filed an application for grant of ad-interim injunction in his favour admitting that the answering respondents were in possession of the shop. Quite maliciously, the petitioner, during the pendency of the suit, also put his lock in the shop. At the instance of the Court, an Advocate Commissioner was appointed for local inspection who upon making such inspection/verification in presence of parties and their respective counsels, submitted a report on 16.2.2005 wherein the



possession of the defendant respondent herein over the shop was found. The plaintiff writ-petitioner had illegally put his lock on the door of the shop. The learned Trial Court considering these facts rejected the petition on 13.9.2005 having found the possession of the answering respondents. The answering respondents thereafter filed an application on 24.4.2006 for opening of lock of the petitioner from the shop. The said matter was heard by the Court in seisin of the case and the prayer was declined on 22.7.2006. Aggrieved thereby, a civil revision application bearing no. 1863 of 2006 was filed which was disposed of by this Court on 23.4.2009 directing the Court below to pass final order on the application of the respondent (defendant in the suit). The learned Sub-Judge-I, Bettiah after hearing the parties vide a reasoned order dated 23.4.2010 (Annexure-B to the counter affidavit of respondent nos. 6 and 7) appointed Advocate Commissioner for opening of lock of the petitioner from the shop on depositing fee of the Advocate Commissioner. Aggrieved by the said order dated 23.4.2010, the writ petitioner filed a writ case in this Court vide C.W.J.C. No. 11625 of 2010. The said order of the Trial Court was stayed. However, while the said writ case was pending, the Trial Court dismissed the Title Suit No. 127 of 2003 on 10.6.2011 negating the case of the petitioner that an agreement was reached between the parties and the plaintiff was entitled to grant of relief. Subsequently,



C.W.J.C. No. 11625 of 2010 was also dismissed and the interim order was vacated. The judgment and decree passed by the Trial Court in the suit has been challenged by the plaintiff-writ petitioner in this Court vide F.A. No. 146 of 2011 in which again an application (I.A. No. 7840 of 2011) was filed for grant of ad interim injunction which was rejected by this Court on 8.12.2011. In this background, the respondents approached the administration and appreciating that it was a case where there was chance of breach of peace and a decree negating the case of the writ petitioner, the Sub-divisional Officer on being satisfied from the report submitted by the Police and prima facie title of the respondents which also stood admitted by rejection of the suit deputed a Magistrate and step was taken for opening of the illegal lock of the petitioner from the shop in question.

I have heard the parties. Indisputably, the matter is sub-judice before the Court. Upon rejection of the suit filed by the writ petitioner, the title of the respondents over the suit property is prima facie not in dispute. The prayer for grant of ad interim injunction made by the petitioner was rejected by the Court on ascertaining the physical status. The petitioner also filed an application in the pending First Appeal which appears to have been rejected. In this factual background, this Court, in view of the rival claims of the parties, would hesitate in granting any relief to the writ petitioner accepting

his case of putting lock on the shop prior to the defendants-respondents. The smeary facts on record is another reason for this Court to refuse the prayer as any order passed may affect the case of the parties in the pending proceeding arising out of the suit.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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