

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.688 of 2011

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1. Subhash Chandra Yadav
2. Ranjeet Yadav @ Ranjeet Prasad Yadav both sons of Late Basudeo Yadav, resident of village Shankarpur P.S. Muffasil, Munger
...Plaintiff/Opposite parties/petitioners
Versus
1. Kesari Prasad Yadav S/o Late Hari Nandan Prasad Yadav
2. Dr. Vinod Kumar Yadav S/o Late Dr D.N.P. Yadav, resident of village Shankarpur, P.S. Mufassil, Munger
....Defendants/Petitioners/Respondents

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Appearance :

For the Petitioner/s : Mr. D. K. Sinha
Mr. Rai Ramesh Prasad
For the Respondent/s : Mr. Raj Shekhar

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

5 19-08-2015 Heard Mr. D. K. Sinha learned Sr. Counsel for the
petitioners and Mr. Raj Shekhar for the respondents.

The present writ application under Article 227 of the Constitution of India has been filed aggrieved by the order dated 04.10.2010 (Annexure-4) passed by the 1st Addl. District Judge, Munger in Misc. Appeal No. 08/2010 whereby the appellate court while interfering with the order dated 04.06.2010 passed by the trial court directed the parties to maintain status quo with respect to the suit land set out in Schedule III of the plaint. The interference was made by the appellate court on the ground that the report of the Amin accepted by the Balabandi Officer was erroneous. The Amin

measured khesra no. 353 whereas the application was filed by the defendant-petitioner(s) for measurement of khesra no.535.

Counsel for the petitioners has drawn attention of the Court to the order dated 28.10.2004 passed by the Balabandi Officer in Balabandi Case No. 09/04-05 to submit that typographical error in setting out the khesra number was corrected by the court on application. On the basis thereof, it has been submitted that an apparent error has been committed by the appellate court in considering the case of the petitioners which may cause prejudice to the plaintiff at the trial.

Counsel for the respondents conversely supported the impugned order. He urged that the appellate court has only directed to maintain status quo with respect to Schedule III property/land of the suit land which is neither prejudicial to the plaintiff(s) nor the defendant-petitioners of the present case. The discretionary writ jurisdiction of this Court should not be exercised. The suit was filed for setting aside the order(s) passed by the Balabandi Officer and affirmed by the appellate authority in Balabandi Appeal No. 01/06-07. The plaintiff(s) also prayed for declaration of his title and confirmation of possession and also for grant of permanent injunction against the defendant-petitioners. In the suit an

application for injunction under Order 39 Rule 1 and 2 CPC was filed which was rejected by the trial court. Aggrieved thereby the appeal was preferred by the plaintiff(s) wherein the impugned order was passed.

The contention of the petitioners is that the observation made in the order shall prejudice the case of the petitioners at the trial. In my view, any observation made in the order is confined for disposal of the matter. It will not be a finding on the merit of the rival claims in the suit. It will be open to the parties of the suit to contest the same on the basis of the pleadings on record. Next question is whether the order of status quo in respect of the suit land (schedule III land) passed by the appellate court merits to be interfered with. In my view, considering the nature of the order which the appellate court has passed and the attending facts of the case this Court does not find it fit and proper to interfere therewith in exercise of the writ jurisdiction under Article 227 of the Constitution of India. The suit itself should be decided expeditiously. Both parties are directed to appear before the trial court along with a copy of the present order within three weeks and thereafter render full cooperation with the court in expeditious disposal of the suit itself which is pending on

the file of the trial court since 2008. The trial court shall
endeavour to dispose of the suit as quickly as possible.

The application is disposed of.

(Kishore Kumar Mandal, J)

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