

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.11 of 2014

=====

1. Amlesh Singh @ Amlesh Kumar Singh @ Bachhu Singh
2. Ashok Kumar Singh @ Alok Singh
3. Nitil Kumar Singh @ Chhota Babu, all sons of late Singheshwari Singh,
resident of Mohalla-West Lohanipur, P.S. Kadamkuan, District Patna.
.... Appellant/s

Versus

1. Lalit Singh
2. Aditya Singh
3. Chhotan Singh
4. Nand Kishor Singh
5. Ramashish Singh
6. Madhesh Singh
7. Thakur Arun Singh, all sons of late Rameshwar Singh, resident of West
Lohanipur, P.S. Kadamkuan, District Patna.
8. Kamlesh Singh @ Bachhan Singh
9. Sunil Singh, both sons of late Chandeshwar Prasad Singh
10. Parmanand Singh @ Bogi Singh
11. Sachida Nand Singh @ Panna Singh
12. Mithilesh Kumar Singh @ Mithu Singh
13. Vinay Kumar Singh @ Naukri Singh, all sons of late Bindeshwar Singh and all
resident of West Lohanipur, P.S. Kadamkuan, District Patna.
.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. ADITYA NARAYAN SINGH-1, Advocate.
For Respondent No.2 : Mr. Jitendra Kishore Verma,
Mr. Pankaj Maijorwar, Advocates.
For Respondent no.10: Mr. Abinash Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-12-2015

Heard learned counwel for the appellants and learned
counsel for the respondents.

2. In the present appeal the appellants are challenging the
order dated 3.12.2013 passed in Title Suit No.742 of 2012 by
Sub-Judge-VI, Patna by which the court below has passed the
order of status-quo allowing both the parties to use common
passage as Rasta for their egress and ingress.

3. Both sides have argued on the merit of the case,

4. Learned counsel for the appellants submits that there was a compromise decree showing two common Rasta, one in the northern side and another in the southern side. It has been alleged by the appellants that the common Rasta which was on the northern side, the respondent have constructed Pucca construction thereby blocked the same which has been resisted by learned counsel for the respondents.

5. The present dispute is with regard to common passage for the use of Rasta in the southern side. The court below has granted injunction considering the fact that the common passage is a Rasta for the use of both parties and the same should not be allowed to be distributed in any manner by making construction thereby prevent other party to use the same.

6. Learned counsel for the appellants has relied on the judgment in the case of Kishore Kumar Khaitan and Anr. V. Praveen Kumar Singh, reported in AIR 2006 SC 1474. That judgment is not applicable to the present case on the ground that relief was sought is mandatory in nature.

7. Learned counsel for the respondents has relied upon the judgment in the case of Maharwal Khewaji Trust (Regd.) v. Baldev Dass, reported in (2004) 8 SCC 488. There Hon'ble Supreme Court has said that it is proper that the property in dispute should be preserved to avoid the multiplicity of litigation which is apparently clear from paragraph 10 of the aforesaid

judgment. It will be relevant to quote paragraph 10 of the aforesaid judgment:

“Be that as it may, Mr. Sachar is right to 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.”

8. Other judgment that has been cited where the principle has been reiterated in a different manner but the tenor is the same where the Court said that in a case of status quo it should be allowed to continue till disposal of the case.

9. In the present case the dispute is with respect to Common Rasta,

the Court has confined the order with respect to use of common use of Rasta which itself makes out a prima-facie case and if any construction is allowed then in that circumstance it will cause irreparable injury to other side and balance of convenience certainly not in the present appellants who have been prevented not to block the Rasta. So far complaint made by the appellants is concerned the other side has constructed a construction, it is for the appellants to take recourse which is available to them but cannot be the subject matter before this Court. This Court finds that the parties should be allowed to use the Rasta till the disposal of the suit but this order of status quo will only be confined to common passage, not to other portion of land. The parties are directed to co-operate with the lower court proceeding and the court below is directed to complete the process within a period of one year from the date of receipt/production of a copy of this order subject to co-operation extended by the parties.

10. With the aforesaid observation this appeal is disposed of.

Vinay/-

(Shivaji Pandey, J)

U			
---	--	--	--