

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18947 of 2012

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1. **Madan Rai** , son Of Late Dahari Rai Resident Of Village- Amaw, P.O. & P.S.- Baniyapur, District- Saran (Chapra)
 2. **Meena Devi**, Wife Of Dhurandhar Rai Resident Of Village- Amaw, P.O. & P.S.- Baniyapur, District- Saran (Chapra)
 3. **Moti Devi**, Wife Of Bashwan Rai Resident Of Village- Amaw, P.O. & P.S.- Baniyapur, District- Saran (Chapra)

.... Petitioner/s

Versus

1. **Parma Rai**, Son Of Sakal Rai Resident Of Village-Amaw, P.O. & P.S.- Baniyapur, District- Saran (Chapra)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Rai

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

06 17-12-2015 Heard learned counsel for the petitioners/
defendants.

In spite of notice, none turned up on behalf of
respondent/ plaintiff.

Petitioners is aggrieved by and dissatisfied with the
order dated 04.06.2012 passed by 4th Additional District Judge,
Saran at Chapra in Misc. Appeal No.08 of 2012, whereby and
whereunder the order dated 24.01.2012 passed by the learned
lower Court (Munsif-III, in connection with Title Suit No.38 of
2011) was set aside and further, prohibited the appellant/ plaintiff
from stalling any construction over the suit property and also from
changing the physical feature of the suit land till the disposal of

the Title Suit No.38 of 2011. Without adverting to merit of the case, the relief so sought for by the plaintiff as is evident from plaint (Annexure-1) looks better to be incorporated:-

By way of temporary injunction, defendant nos.1 to 4 be enjoined from any kind of construction over Schedule-II land, cost of the suit, any other relief or reliefs, plaintiff is found so entitled for.

Presence of temporary injunction is under Section 37 of the Specific Relief Act and Sub-section-(1) thereof specify in following manner:-

“37.(1) Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908)”.

From plain reading of the aforesaid Sub-section-1 of Section 37, it is evident that temporary injunction is to be applied for specified period or until the further order at any stage of a suit. However, from the nature of suit as is apparent from relief so sought for, again indicate it a suit for temporary injunction. That means to say, prohibition is sought for till proper

adjudication, for which no further evidence has been brought up on record. Apart from this, the interim prayer so made, is found in order to give additional support, and as granted, will frustrate the relief.

Apart from this, after perusal of the rival pleading, it is evident that previous partition is admitted. However, plaintiff alleges that in each and every plot, he got share and in this way, has suggested that Northern Portion has been allotted to vendor of defendant while Southern Portion happens to be allotted to him relating to Schedule-II Property which has been controverted by the defendant. Moreover, presence of defendant over the disputed land has itself been admitted by the plaintiff under Paragraph-6 of the plaint and in the aforesaid background, order passed by the learned Appellate Court did not find favour. Not only this, there happens to be some sort of legal deficiency in framing the suit, during course of which, no relief has been sought for against the sale deed having in favour of defendant as well as restoration of possession as is found duly disposed. Because of the fact that share of vendor of defendant is admitted and further, having absence of any sort of relief at the end of plaintiff relating to the document in favour of defendant coupled with theme of dispossession is bound to jerk the case of the plaintiff as

genuineness of document as well as possession happens to be out of controversy. Hence, the decision relied upon the learned Appellate Court has got no applicability.

Accordingly, order dated 04.06.2012 passed by the learned 4th Additional District Judge, Saran at Chapra in Misc. Appeal No.08 of 2012 is hereby set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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