

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10718 of 2014

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1. Nizamuddin.
 2. Sah Mohmed, both are son of late Hawaldar Mian.
 3. Bibi Aesha wife of late Amin Mian.
 4. Husnain Mian.
 5. Shaheb Hussain, defendants no. 4 and 5 are sons of Ashin Mian Mohammed.
 6. Noorjahan wife of Mainuddin Mohhammed.
 7. Namaj Hussain.
 8. Sarfaraj Hussain, defendant nos. 8 and 9 are son of Mainuddin Mohammed, all are the resident of village-Bavnauli, P.S. Mairwa, District-Siwan.

.... Petitioner/s

Versus

1. Khalil Mian son of Ali Hasan Mian, resident of village-Bavnauli, P.S. Mairwa, District-Siwan.
2. Saddam Hussain, son of Ashin Mian Mohammed resident of village-Bavnauli, P.S. Mairwa, District-Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-07-2016

Heard Mr. Ranjeet Kumar, learned counsel for the petitioners.

The petitioners are the defendants in the suit and have filed this application under Article 227 of the Constitution of India aggrieved by the order passed by the appellate court below affirming the order of status quo as passed by the trial court.



The suit has been filed for partition of the suit property and during the pendency of the suit, the plaintiff filed the petition praying for injunction restraining the defendants from destroying the property or changing its nature. The prayer was also made for restraining the defendants from changing the suit property. The trial court after hearing the parties passed the order directing the parties to maintain status quo over the suit property till disposal of the suit. In appeal by the defendants the said order has been affirmed by the appellate court below.

Learned counsel for the petitioners has submitted that the suit filed by the plaintiff is not maintainable as the plaintiff has already admitted that there had been partition between the parties. It has been further submitted that the direction for maintaining the status quo as affirmed by the appellate court infringes the right of enjoyment of the suit property by the defendants. Learned counsel for the petitioners has pointed out that the judgment has been passed in T.S. No. 321 of 2008 which was a suit filed by the plaintiff wherein the plaintiff claimed his title and possession over the suit land as described in the plaint of the said suit and in the said suit the plaintiff admitted the fact of partition. It has therefore been submitted that both the courts below have erred in law in not considering the affect of the said judgment on the rights of the parties. It has been, however,

accepted by the petitioner that the suit property subject matter of T.S. No. 321 of 2008 are not the suit property in the present suit.

After considering the submissions and the perusal of the impugned order including the order passed by the trial court, it is manifest that both the courts below have directed the parties to maintain the status quo with regard to the suit property. The law is well settled that the subject matter of the suit should be protected during the pendency of the litigation. The assertion on behalf of the petitioners that such an order will infringe the rights of the defendant-petitioners over the suit property is clearly misconceived. It is also seemly to mention here that the petitioners have admittedly not filed any petition before the learned court below seeking rejection of the plaint nor any other appropriate objection had been raised on the basis of the assertion that the plaintiff has admitted the fact of partition of the suit property. This Court, therefore, is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India to interdict the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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