

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.120 of 2013

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1. BHIKHARI PASWAN

2. Shukhari Paswan. Both are Son of Late Panchu Paswan Resident of Village AND
P.O.- Bhagwatipur (Amghatta) P.S.- Dumra, District- Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar through D.M. Sitamarhi

2. Anchal Adhikari, Dumra Sub-Division-Sitamarhi, Sadar District- Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SURENDRA KISHORE THAKUR, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-04-2016

Heard Mr. Surendra Kishore Thakur, learned counsel
appearing on behalf of the petitioner.

2. This application has been filed under Article 227 of the
Constitution of India questioning the dismissal of the prayer for
injunction of the plaintiff by both the courts below. The factual
expose' are that the plaintiff filed P.S. No. 200 of 2011 for
declaration of tile and confirmation of possession over the suit land
and also for declaration that the entry of the name of the State of
Bihar in the survey record of rights was wrong and not binding upon
the plaintiffs. During the pendency of the said suit plaintiffs filed a
petition for grant of injunction restraining the defendant-State of
Bihar from interfering in possession of the plaintiffs over the suit



land. The trial court after hearing the parties and considering the materials on record rejected the petition for injunction. In appeal by the plaintiffs the appellate court below after elaborately considering the matter and taking into notice the stand on behalf of the defendant-State of Bihar that the portion over which the ancestral house of the plaintiff stands is not being claimed as encroached portion, has affirmed the dismissal of the injunction petition.

3. Mr. Thakur, learned counsel appearing for the petitioners has submitted that the plaintiffs have their ancestral house over the suit plot and therefore dispossession from the same during pendency of the suit would result in irreparable loss. Elaborating his submissions, it has been pointed out that in the cadastral survey a total area of 28 decimals was recorded in the name of the ancestors of the plaintiff but during the recent survey 4 decimals of land has been wrongly recorded in the name of State of Bihar out of the land of the plaintiffs. It has been canvassed that as the plaintiffs are in possession over the same having their ancestral house, the courts below should have considered the matter in that perspective and should have allowed the prayer for injunction.

4. After considering the submissions and the materials on record including the order passed by both the courts below, it is

evident that the appellate court below after taking notice of the stand on behalf of the defendant-State of Bihar has concluded as follows:-

"6.....
Certainly, the plaintiffs may have prima facie case with regard to the attached ancestors house upon which the State is not claiming to be a portion encroached but, I find that there is no balance of convenience and irreparable loss to the plaintiffs-Appellants in the instant case.....
....."

5. Further it also appears that both the courts below have elaborately considered submissions and the materials produced by the parties and thereafter have dismissed the prayer for injunction. This Court therefore is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India in order to interdict the concurrent findings by both the courts below.

6. This application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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