

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1801 of 2013

IN

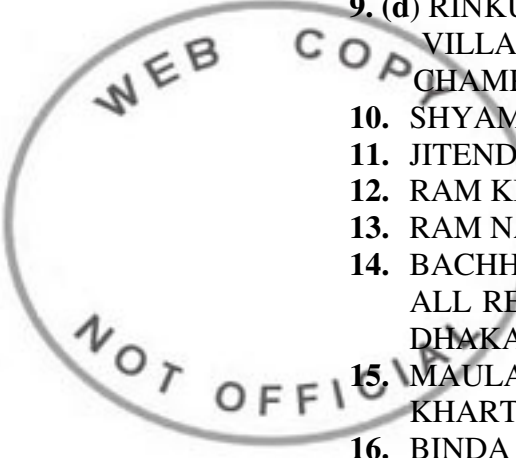
First Appeal No. 36 of 1985

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1. HARI NARAIN OJHA SON OF SHRI KALIKA NAND OJHA, RESIDENT OF VILLAGE BARHARWA KALA, TOLA GAIRA, P.S. KOTWA DISTRICT-EAST CHAMPARAN.
 - 2(a) KAMESHWAR SINGH
 - 2(b) RAJESHWAR SINGH, SONS OF LATE FUDAN SINGH, BOTH RESIDENT OF VILLAGE BARNABANS GHAT, P.S.-BARURAJ, DISTRICT-MUZAFFARPUR.
 - 2(c) RAJ KUMARI KUER WIFE OF RAM SUBHAG SINGH RESIDENT OF VILLAGE SONAOUTH P.S. SAHEBGANJ, DISTRICT-MUZAFFARPUR.
 3. SMT. LALITA DEVI ALIAS LALITA KUER, WIFE OF RAGHA SINGH, RESIDENT OF VILLAGE RAMPURWA, P.S. HARSIDHI, DISTRICT EAST CHAMPARAN.

.... PETITIONER/S

VERSUS

1. JAGTARAN DEVI (EXPUNGED)
2. KANTI THAKUR, SON OF INDRASAN THAKUR
3. (a) KAUSHALIYA KUER, WIFE OF LATE NAGA THAKUR
- 3(b). JITENDRA THAKUR.
- 3(c). RAM KISHORE THAKUR (TO BE VERIFIED FROM ON GROUND OF APPEAL)
- 3(d). SURENDRA THAKUR.
- 3(e). HARENDRA THAKUR, SONS OF LATE NAGA THAKUR. ALL RESIDENT OF VILLAGE MISHRAULIA TAPPPA NONOUR, P.S. DHAKA NOW CHIRAIYA, DISTRICT-EAST CHAMPARAN.
- 3(f). MITHILESH DEVI WIFE OF KAILASH SINGH, RESIDENT OF VILLAGE PANTAKI, P.S.-BARGANIA, DISTRICT-SITAMARHI.
- 3(g). PARMILA DEVI, WIFE OF JAI KISHORE SINGH, RESIDENT OF VILLAGE RUPAHARA P.S. CHIRAIYA, DISTRICT-EAST CHAMPARAN.
- 3(h). PREM DEVI, WIFE OF SHYAM KISHORE SINGH, RESIDENT OF VILLAGE LAKHAWARA, P.S. LAKHAWARA, DISTRICT EAST CHAMPARAN.
- 3(i). PRATIBHA DEVI, WIFE OF PREM SINGH, RESIDENT OF VILLAGE BARKAGAOWN, PS.-PAKARIDAYAL, DISTRICT-EAST CHAMPARAN.
4. RAM PADARATH THAKUR SON OF BASUDEO THAKUR
5. SHAMBHU THAKUR
6. BINOD THAKUR
MINOR SONS OF BASUDEO THAKUR, MINOR UNDER THE GUARDIANSHIP OF THEIR MOTHER MOST. GUJARA KUER.
7. (a) NAME NOT KNOWN WIFE OF SIKANDAR THAKUR
8. (a) MOST. DHUNIA DEVI W/O LATE RAJ NANDAN THAKUR
8. (b) SUJIT KUMAR.
8. (c) AJIT KUMAR, BOTH MINOR SONS OF LATE RAJ NANDAN THAKUR, MINORS UNDER THE GURDIANSHIPS OF THEIR MOTHER MOSTT. DHUNIA DEVI.
8. (d) PAPI KUMARI, MINOR.
8. (e) SUDHA KUMARI MINOR DAUGHTERS OF LATE RAJ NANDAN THAKUR MINORS UNDER THE GUARDIANSHIP OF THEIR MOTHER MOST. DHUNIA DEVI.

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9. (a) ABHIMANYU THAKUR S/O LATE RAJDEO THAKUR.
 9. (b) SANJAY THAKUR S/O LATE RAJDEO THAKUR.
ALL RESIDENTS OF VILLAGE MISHRAULIA, TAPPA NANOUR, P.S. CHIRAIYA, DIST EAST CHAMPARAN.
 - 9.(c) RANJU DEVI W/O CHANCHAL SINGH RESIDENT OF VILLAGE RUPHARA, P.S. CHIRAIYA, DIST EAST CHAMPARAN.
 9. (d) RINKU KUMARI D/O LATE RAJDEO THAKUR RESIDENT OF VILLAGE MISHRAULIA TAPPANANOUR, P.S. CHIRAIYA, DIST EAST CHAMPARAN.
 10. SHYAM NANDAN THAKUR S/O LATE SIKANDAR THAKUR.
 11. JITENDRA THAKUR.
 12. RAM KISHORE THAKUR SONS OF LATE NAGA THAKUR.
 13. RAM NARESH THAKUR S/O CHANDRADEO THAKUR .
 14. BACHHA THAKUR S/O RAMDEO THAKUR.
ALL RESIDENTS OF VILLAGE MISHRAULIYA TAPPA NANOUR, P.S. DHAKA, NOW CHIRAIYA, DIST EAST CHAMPARAN.
 15. MAULA DEEN MIAN S/O HABEEB MIAN RESIDENT OF VILLAGE - KHARTARI TAPPA, P.S. DHAKA, DIST CHAMPARAN.
 16. BINDA PRASAD THAKUR S/O JANGI THAKUR RESIDENT OF VILLAGE MISHRAULIA TAPPA NANOUR, P.S. DHAKA, DIST EAST CHAMPARAN.
 17. BACHCHA RAI SON OF UDIT RAI RESIDENT OF VILLAGE SAPGARAHA TAPPA NONAUR, P.S. CHIRAIYA, DIST EAST CHAMPARAN.
 18. (a) MANKI KUER W/O LATE LALDEO THAKUR.
 18. (b) OM PRAKASH THAKUR
 18. (c) SANJAY THAKUR SONS OF LATE LALDEO THAKUR.
ALL RESIDENTS OF VILLAGE MISHRAULIA TAPPA NONOUR, P.S. DHAKA NOW CHIRAIYA, DIST EAST CHAMPARAN.
 19. MANGNI MIAN
 20. MOULVI MIAN SONS OF NAYAMAT MIAN
 21. JHINGAR MIAN S/O KURBAN MIAN, DECEASED.
ALL RESIDENTS OF VILLAGE SANUARIYA TAPPA NANOUR, P.S. DHAKA, DIST CHAMPARAN.
 22. AKBAR MIAN (EXPUNGED)
 23. HAJI MIAN S/O KURBAN MIAN
 24. GAJI MIAN (EXPUNGED)
 25. BIBI LARUAN (EXPUNGED)
 26. MAHENDRA SINGH S/O RAMA SINGH
ALL RESIDENTS OF VILLAGE SANUARIYA TAPPA NANOUR, P.S. DHAKA, DIST CHAMPARAN.
 27. NARMDESHWAR THAKUR S/O LATE TRILOKI THAKUR
 28. PARASH NATH THAKUR (EXPUNGED)
 29. VEYASHDEO THAKUR S/O SARJUG THAKUR.
ALL RESIDENTS OF VILLAGE MISHRAULIYA TAPPA NANOUR, P.S. DHAKA, NOW CHIRAIYA, DIST EAST CHAMPARAN.
 30. JOKHU RAUT S/O JHAGRU RAUT RESIDENT OF VILLAGE BAIJNATHPUR TAPPA NANOUR, P.S. DHAKA, DIST CHAMPARAN.
 31. NAGA RAI S/O GOBARDHAN RAI
 32. VED PRAKASH THAKUR S/O SHEO PRAKASH THAKUR.
BOTH RESIDENTS OF VILLAGE MISHRAULIA TAPPA NONAUR, P.S. DHAKA, NOW CHIRAIYA, DIST CHAMPARAN.
 33. HANUMAN RAI S/O BHOLA RAI RESIDENT OF VILLAGE SAPGARAHA TAPPA NONAUR, P.S. CHIRAIYA, DIST EAST CHAMPARAN.

34. NARAD THAKUR SON OF BANSI THAKUR
 35. RAMA KANT THAKUR S/O SHANKAR THAKUR
 36. NARAD THAKUR SON OF BANSHI THAKUR
 37. TRILOKI THAKUR S/O RADHA THAKUR
 38. RAJ KISHORE THAKUR S/O JINISH THAKUR.
 ALL RESIDENTS OF VILLAGE MISHRAULIYA TAPPA NANOUR, P.S. DHAKA, NOW CHIRAIYA, DIST EAST CHAMPARAN.
 39. (a) GOBRI RAI S/O JANAK RAI.
 39. (b) JYOTIK RAI S/O LATE JANAK RAI.
 39. (c) RADHIKA KUMAR, MINOR
 39. (d) SHANTI KUMARI, MINOR.
 39. (e) SABUNI KUMARI, MINOR
 39. (f) LALPARI KUMARI, MINOR DAUGHTERS OF LATE JANAK RAI UNDER THE GUARDIANSHIP OF JANAK RAI.
 ALL RESIDENTS OF VILLAGE BAIJNATHPUR, P.S. CHIRAIYA, DIST EAST CHAMPARAN.
 40. RAMA NAND RAI S/O BRICHHA RAI
 41. BAIJNATH DAS, MAHANTH
 42. SUKHARI RAI S/O KISHUN RAI
 43. AVTAR RAI S/O KISHUN RAI
 44. (a) RAVINDRA NATH THAKUR.
 44. (b) OM PRAKASH THAKUR.
 44. (c) BED PRAKASH THAKUR SONS OF LATE GENA THAKUR.
 44. (d) RUP SAGAR DEVI WIDOW OF LATE RAM NARESH THAKUR.
 44. (e) LAKSHMI KUMARI MINOR DAUGHTERS OF RAM NARESH THAKUR.
 MINOR UNDER THE GUARDIANSHIP OF THEIR MOTHER RUP SAGAR DEVI.
 ALL RESIDENTS OF VILLAGE MISHRAULIYA TAPPA NANOUR, P.S. DHAKA NOW CHIRAIYA, DIST EAST CHAMPARAN
 RESPONDENT/S

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Appearance:

For the Petitioner/s	:	Mr. Bhupendra Narain Sinha
For the Respondent/s	:	Mr. Sunil Kumar Mandal-SC-3 Mr. Bipin Kumar-AC to SC-3 Smt. Neelam Kumari-AC to SC-3
For Private Respondents	:	Mr. Shailendra Kumar-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 03-10-2016

During course of pendency of F.A. No.36/1985, I.A. No.2866/2010 was filed on behalf of respondent no.2 and 4 under Order-XXXIX Rule-1 and 2 read with Section 151 of CPC for restraining the appellants from alienating the property during pendency of the appeal on the ground that appellants sold away



certain lands, being the suit property as well as are in process of negotiation to sell. Appellants filed rejoinder annexing the sale deed having executed by the respondent during pendency of the appeal whereupon submitted that respondents have themselves indulged in such unwarranted activities, whereupon prayed for rejection of the petition.

2. The matter was heard and during course of hearing, it has been submitted at the end of both the parties that an order of status quo may be passed to be effective till disposal of the first appeal which could serve the purpose. Furthermore, both the parties undertook to maintain status quo till the disposal of the appeal and in view of the undertaking having been made on behalf of both the parties, I.A. No.2866 of 2010 was disposed of acknowledging the same.

3. It is evident from the record of F.A. No.36/1985 that Naga Thakur was respondent no.3 and after his death, his legal heirs were substituted vide order dated 05.08.1996 most probably before the learned lower court itself.

4. It is further evident that I.A. No.4980/2012 was filed on behalf of appellant disclosing therein that as respondent no.3(b) Jitendra Thakur and 3(c) Devendra Thakur have violated the undertaking by executing sale deed dated 10.05.2010 as well as 15.03.2011 respectively with regard to suit property on account



thereof, they be punished in terms of Order-XXXIX Rule-2(A) of the CPC whereupon by elaborate order dated 08.11.2012 passed in F.A. No.36/1985, it has been observed that there happens to be willful violation of the undertaking so recorded vide order dated 23.04.2010 whereupon, respondent no.3(b), 3(c) are liable for prosecution and punishment in terms of Order-XXXIX Rule-2(A) of the CPC and consequent thereupon, vide order dated 23.11.2012, it has been directed that I.A. No.4980 of 2012 be taken as a petition purported to be under miscellaneous judicial case and on the basis thereof, instant MJC has been registered.

5. Heard the learned counsel for the petitioners as well as learned counsel for the opposite parties along with learned SC-3.

6. It has been submitted on behalf of petitioners that there happens to be no denial at their end (OPs) over execution of sale deed on 10.05.2010 as well as 15.03.2011 respectively after passing of the order dated 23.04.2010 whereby and whereunder the court had taken cognizance of an undertaking to maintain status quo having given by the respective parties. That being so, prima facie there happens to be utter violation of the order dated 23.04.2010 and for that they are liable to be punished in terms of Order-XXXIX Rule-2(A) of the CPC.

7. It has also been submitted that giving undertaking and acting contrary to it have been considered to be liable for prosecution

under Order-XXXIX Rule-2(A) of the CPC and for that, relied upon AIR 1977 Pat. 282 as well as AIR 1994 SC 1837.

8. Learned counsel for the O.P. refuting the submission made on behalf of petitioner has submitted that there should be specific order of the court prohibiting the parties to do any activity. The order impugned speaks that both the parties had given their undertaking and in view thereof, the I.A. No.2866/2010 was disposed of. Therefore, the order should have indicated that all the respondents who, counted large number, have given an undertaking as the controversy was only in between respondent no.2 and 4 at one end and appellant at other. Therefore, the order impugned suffers from ambiguity whereupon, instant proceeding is fit to be dropped. Apart from this, it has also been submitted that first appeal no.36 of 1985 had already been decided and petitioner/appellant lost.

9. The learned SC-3 has submitted that because of the fact that Order-XXXIX Rule-2(A) of the CPC is punitive in nature and on account thereof, the court should be cautious while adjudicating the same.

10. As stated above, I.A. No.2866/2010 was filed by the respondent no.2 and 4 against the Appellants/plaintiffs whereupon rejoinder was filed on behalf of appellant/plaintiff. Therefore, on 23.04.2010 when the I.A. No.2866/2010 was taken up, the matter was in between respondent no.2 and 4 at one end while



appellant/petitioners at the other end. Because of the fact that none others were noticed over I.A. No.2866/2010 nor were prayed for to be injuncted, on account thereof, their presence at that very moment were not warranted. In the background of the prayer and rejoinder to the prayer, as indicated above in between respondent no.2 and 4 as well as appellant, the order would give an implied meaning that it would have been that means to say tender of an undertaking must be at the end of respondent no.2 and 4 as well as appellant. In case, other respondents were also dragged, some sort of evidence/material must have been on the record asking for injunction against them and for that, record of F.A. No.36/1985 has been gone through. No such prayer is found made on behalf of any of the party.

11. Because of being a punitive in nature, on account thereof, any proceeding being initiated under the banner of Order-XXXIX Rule-2(A) of the CPC requires stricter proof than the normal civil action and for that, at least there should be a prima facie material on the record that the order impugned, against which violation has been alleged happens to be clear unambiguous and within full knowledge of the contemner. As indicated above, in the facts and circumstances of the case, though perceiving that there happens to be ample material on record to suggest that respondent no.3(b) Jitendra Thakur and 3(c) Devendra Thakur have executed sale deed on 10.05.2010 as well as 15.03.2011 respectively but considering the

facts that I.A. No.2866/2010 was filed by respondent no.2 and 4 against the appellant and rejoinder was filed on behalf of appellant/petitioners without having separate I.A. to bow down the other respondents, then in that event, the undertaking having been perceived by the court, create doubt over presence of respondent no.3(b) and 3(c) as well as volunteering themselves to such undertaking. On account thereof, doubt has crept up which ultimately lean in favour of respondent no.3 (b) and 3(c). Consequent thereupon, instant petition is found deficient one and is accordingly, dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	AFR
CAV DATE	19.09.2016
Uploading Date	04.10.2016
Transmission Date	N.A.