

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3652 of 2014

In
MA 237 of 2012

=====

Subash	Versus	... Petitioner/s
The Bihar State Board of Religious Trust Patna & Ors Respondent/s		

=====

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Singh
For the Respondent/s : Mr. Jaishankar Barnwal

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

10 27-01-2016

Heard learned senior counsel Mr. Rajendra Prasad

Singh for the petitioner and learned senior counsel Mr. Ganpati

Trivedi for the respondent Nos.1 and 2.

This application under Article 227 of the Constitution of India has been filed by the defendant No.11 for setting aside the order dated 05.09.2009 passed by the Additional District Judge, F.T.C.-4, Rohtas in Civil Miscellaneous Appeal No. 8 of 2007/ 2 of 2008 whereby the lower appellate Court reversed the order dated 06.11.2007 passed by the learned Sub-Judge-III, Sasaram in Title Suit No. 248 of 2002 rejecting the application under Order 39 Rule 1 C.P.C. filed by the plaintiff.

The plaintiff-respondents filed Title Suit No. 248 of 2002 praying for declaration that the temple of Sri Radha Govind Ji and the trust situated in Mohalla Pali Dehri is the private temple and trust of the plaintiff and the family members of late Shambhu Nath Singh. The defendants be restrained by permanent injunction



from interfering with the possession of the plaintiff over the lands and buildings over the lands detailed in schedule-A of the plaint. During the pendency of the suit, the plaintiff filed an application under Order 39 rule 1 and 2 of the Code of Civil Procedure for temporary injunction restraining the defendants from interfering with the possession of the plaintiff. The Bihar State Board of Religious Trust, Patna filed rejoinder to the said injunction application. The defendant No.11 petitioner also filed objection to the injunction application.

The learned trial Court rejected the injunction application finding that the plaintiff has got no prima-facie case. Thereafter the plaintiff filed appeal before the lower appellate Court under Order 43 Rule 1 (r) C.P.C. By the judgment dated 05.09.09 the lower appellate Court recorded a clear finding that the appellants have got prima-facie case. Further, the property in question is in possession of the appellants and the property is being managed by the appellants since inception and there is nothing to show that the Board has taken over the management of the temple Radha Govind Ji and accordingly, allowed the miscellaneous appeal and reversed the order passed by the trial Court and thereby granted injunction restraining the defendants from interfering with the possession of the plaintiff.

Although, with the writ application the injunction



application is not annexed, at the time of hearing of this writ application, copy of the injunction application was given to the Court. From perusal of the injunction application, it appears that it is specifically pleaded by the plaintiff that the defendants unauthorizedly attempted to interfere in the affairs of the temple and also over the lands in dispute and falsely alleged that the Bihar State Board of Religious Trust, Patna defendant No.1 had created scheme for management of the temple. The alleged scheme was found not legal by the learned District Judge, Rohtas in Miscellaneous case No. 17 of 2002 and that the defendants have got no authority to interfere in the management of the temple and the lands and buildings detailed in Schedule-A of the plaint. Defendant No.1 never took over the temple of Sri Radha Govind Ji. The temple is of the plaintiff and their family and is the private temple and accordingly prayed that the defendants be restrained by temporary injunction from interfering in the possession and title of the plaintiff over the lands detailed in Schedule-A. It may be mentioned here that the defendant No.11 is neither a member of the managing committee nor an officer of the Bihar State Board of Religious Trust, Patna. He never claimed to be in possession of the property, nor he ever stated or pleaded that he ever interfered with the possession of the plaintiff nor he claimed to be the manager or is managing the trust property. From perusal of the injunction

application as stated above, it appears that the injunction was sought for against the Bihar State Board of Religious Trust, Patna who constituted a committee pursuant to the direction of the High Court for management of the property which is claimed by the plaintiff as private trust and the Bihar State Board of Religious Trust, Patna is claiming it to be a public trust. The Bihar State Board of Religious Trust, Patna is not aggrieved by the order passed by the Court and therefore, the order passed by the appellate Court is not challenged by the Board. Further the defendant No.11 has filed this writ application who cannot be said to be an aggrieved person.

So far the finding of the Court below that the plaintiff is in possession and is managing trust property since very inception is finding of fact therefore cannot be interfered with in supervisory jurisdiction under Article 227 of the Constitution of India.

Accordingly, this application is dismissed.

(Mungeshwar Sahoo, J)

ravi/-

U			
---	--	--	--