

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.461 of 2016

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Yogendra Sah & Ors

.... Appellant/s

Versus

Dhanpat Sah & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nagendra Rai

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 2 31-08-2016 1. Heard the learned counsel, Mr. Nagendra Rai, for the petitioner.
2. Perused the order passed by the lower appellate Court as well as the trial Court.
3. It appears that suit was filed by the plaintiff petitioner for permanent injunction restraining the defendants from interfering with the possession of the plaintiff petitioners and from making any construction over the property. The defendants filed written statement claiming possession over the property. The plaintiff thereafter filed injunction application praying for restraining the defendant from dispossessing the plaintiff and making any construction on the suit property. The trial Court after hearing the parties by the order dated 31.10.2012 directed that the parties shall maintain status quo. Against that order, Appeal was filed. The

appellate Court held that the plaintiff had got no prima facie case and then allowed the Appeal and trial Court order was set aside.

4. The learned counsel, Mr. Nagendra Rai, for the petitioner relied upon the decision of Hon'ble Supreme Court reported in *AIR 2005 SC 104* and decision of this Court reported in *2001 (2) PLJR 268* and submitted that during the pendency of the suit, the nature of the suit property should not be allowed to be changed. According to the learned counsel, the order passed by the lower appellate Court is erroneous and it is perverse. Wrong facts have been stated in the order resulting allowing the Misc. Appeal.

5. Admittedly, the suit has been filed by the plaintiff for permanent injunction. The plaintiff is claiming to be in possession of the property whereas the defendants are also claiming to be in possession of the property. From perusal of the trial Court order, it appears that there is no prima facie finding regarding the possession of any party. However, the trial Court directed both the parties to maintain status quo.

6. The Hon'ble Supreme Court in *AIR 2006 SC 1474 Kishore Kumar Khetan Vs. Pravin Kumar Singh* held that '**the order of status quo without indicating what the status quo was is not a proper order.**' Here admittedly, except the status quo, there is nothing in the order of the trial Court which indicate that what is



meaning of that status quo and for what status quo was directed to be maintained. The Hon'ble Supreme Court also held that the defendant had applied for injunction against his dispossessed pending suit. The Court refused to grant ad-interim ex.-parte order of injunction. An appeal was filed against such refusal. The appellate Court passed an order of status quo without indicating what the status quo was. The order was improper. If the appellate Court was satisfied that the appellant before him had made out a prima facie case for ad-interim ex.-parte injunction and the balance of convenience justified to grant of such an injunction, it was for him to have passed such an order of injunction but simply directing the parties to maintain status quo without indicating what that status quo was, is not an order that should be passed at the initial stage of the litigation.

7. So far the submission of the learned counsel for the appellant that there are mis-appreciation of fact and errors of record is concerned, it may be mentioned here that the Hon'ble Supreme Court in the case of *Jai Singh Vs. Municipal Corporation (2010)9 SCC 385* has held that **'the exercise of supervisory jurisdiction under Article 227 of the Constitution of India must be within the well recognized constraints. It cannot be exercised like a 'bull in a China shop' to correct all errors of Judgment of a Court or**

Tribunal act within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in greave dereliction of duty or in flagrant abuse of fundamental principal of law or justice. The High Court cannot lightly or largely act as an appellate Court and re-appreciate the fact. Generally, it cannot substitute its own conclusion for the conclusion reached by the Courts below or the statutory / quasi judicial tribunal.'

8. In the present case, since both the parties are claiming possession over the suit property, there is no question granting injunction at the initial stage arises because it will amount to declaration of his possession in whose favour the order of injunction shall be passed. In such view of the mater, in my opinion, this is not a fit case for interference in exercise of supervisory jurisdiction under the Constitution of India.

9. Thus, this Civil Misc. application is dismissed.

10. Any observation on merit, if made by this Court in this order, shall not prejudice the parties in the case on merit.

Sanjeev/-

(Mungeshwar Sahoo, J)

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