

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12877 of 2013

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1. CHANDRA PRAKASH, SON OF LATE SHIVNATH PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN
 2. ABHIMANYU KUMAR, SON OF LATE SHIVNATH PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN
 3. VIVEK KUMAR, SON OF LATE SHIVNATH PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN
 4. MOSMAT PRABHAVATI DEVI, WIFE OF LATE SHIVNATH PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN
 5. KUSUM DEVI, WIFE OF SRI GAURI SHANKAR PRASAD, DAUGHTER OF LATE SHIVNATH PRASAD RESIDENT OF VILLAGE - NARAYANPUR, P.O. SUTIHAR, P.S. DERNI, DISTRICT - SARAN
 6. REKHA DEVI, WIFE OF SRI BHARAT PRASAD, DAUGHTER OF LATE SHIV NATH PRASAD RESIDENT OF VILLAGE - MAIRWA, P.O. AND P.S. MAIRWA, DISTRICT - SIWAN
 7. RAJESH KUMAR, SON OF LATE JAGDISH PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN
 8. MUKESH KUMAR, SON OF LATE JAGDISH PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN
 9. URMILA DEVI, WIFE OF SRI BRAJ KISHORE PRASAD, DAUGHTER OF LATE JAGDISH PRASAD RESIDENT OF VILLAGE - EKMA, P.O. AND P.S. EKMA, DISTRICT - SARAN
 10. PUNAM DEVI, WIFE OF SRI OM PRAKASH GUPTA, DAUGHTER OF LATE JAGDISH PRASAD RESIDENT OF MOHALLA - SADAR BAZAR, P.O. LUCKNOW, P.S. LUCKNOW, DISTRICT - LOCKNOW (UTTAR PRADESH)
 11. SHANTI DEVI, WIFE OF SRI MAHATMA PRASAD, DAUGHTER OF LATE JAGDISH PRASAD RESIDENT OF VILLAGE - SUTIHAR, P.O. SUTIHAR, P.S. DERNI, DISTRICT - SARAN
 12. INDRA DEVI, WIFE OF SRI SIV DAYAL PRASAD, DAUGHTER OF LATE JAGDISH PRASAD RESIDENT OF VILLAGE - LALPUR, P.O. PARSA, DISTRICT - SARAN

.... PETITIONER/S

VERSUS

1. JAGARNATH SAH, SON OF LATE BHADAL SAH, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN AT C/O SRI KRISHNA BAHADUR SHRESHTA MOHALLA - SONAPUR, WARD NO.2, P.O. DUBHI, DISTRICT SUNSARI (NEPAL)
2. BAHAGWATI PRASAD, SON OF LATE RAJENDRA PRASAD, RESIDENT OF MOHALLA - KAJJI, MOHALLA, P.O. SIWAN, DISTT. SIWAN AT PRESENT RESIDING AT OF MOHALLA - DAULATGANJ, P.O. CHAPRA,

P.S. BHAGWAN BAZAR, DISTRICT - SARAN

3. PRAMOD PRASAD, SON OF LATE BADRI PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN

4. ANAND KUMAR @ PAPPU, SON OF LATE BADRI PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN

5. CHUNNU KUMAR, SON OF LATE BADRI PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN

6. ARUN KUMAR @ GUDDU, SON OF LATE BADRI PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN

7. BUCHCHI DEVI, DAUGHTER OF LATE BADRI PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN

8. BABY DEVI, DAUGHTER OF ATE BADRI PRASAD, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN

9. KAMLA SAH, SON OF LATE RAGHUNATH SAH, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN

10. BHAGWAN SINGH, SON OF LATE RAM KRPAL SINGH, RESIDENT OF MOHALLA - DAULATGANJ, P.O. CHAPRA, P.S. BHAGWAN BAZAR, DISTRICT - SARAN

.... RESPONDENT/S

Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 20-10-2016

Heard learned counsel for the petitioners and the learned counsel for the respondents.

2. This application, is directed, under Article 227 of the Constitution of India, against the order dated 15.04.2013 passed in Title Suit No. 498 of 2010, whereby the learned Sub-Judge-V, Chapra, rejected the application dated 19.03.2012 filed, under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, by the

plaintiffs-petitioners for mandatory injunction to remove the defendant/respondent no. 10 to the occupied portion of the suit premises.

3. It appears that the plaintiffs/petitioners filed the Partition Suit No. 498 of 2010 for partition of 1/3rd share in property as detailed in Item Nos. 1 and 2 of the Schedule I of the plaint. After appearing defendants-respondents, the plaintiffs-petitioners filed the application on 19.03.2012 under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for direction to defendant-respondent no.10 to open the lock of room of premises of Item No. 1 of Schedule I/Schedule II and remove his articles with condition that during the pendency of the suit defendant-respondent no. 10 entered in the room from back side of premises on 07.03.2012 and kept Chouki and other articles on the basis of sale deed got executed by him in respect to part of premises. The defendant/respondent no. 10 filed his show cause with contention that Holding No. 634 covering under Schedule II of plaint was ancestral house of Ram Sundar Sah and same was partitioned in between his two sons namely, Bisheshwar Sah and Gajadhar Sah. Gajadhar Sah got share in north whereas Bisheshwar Sah got share in south. Gajadhar Sah constructed double storied building in his share. The defendant-respondent no. 10 purchased 10 Dhur land of Gajadhar Sah to his grand son Jagarnath Sah and

constructed a room, which is in his possession.

4. Learned counsel for the petitioners submits that house in dispute is joint family property and they have filed the partition suit for their 1/3rd share. As such, occupation of one room of said house by defendant-respondent no. 10 on the basis of purchase of share in joint house is illegal and he is liable to be ejected under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure and placed reliance in case of Dorab Cawasji Warden Versus Coomi Sorab Warden, AIR 1990 SC 867, in which, the Hon'ble Apex Court.

5. On going through the impugned order, it appears that the learned Sub-Judge-VI, Chapra has rejected the application of plaintiffs-petitioners to remove the defendant-respondent no. 10 to a room of suit premises arriving at conclusion that there is specific case of defendant that after purchasing 10 Dhur land to Jagarnath Sah, grand son of Gajadhar Sah, he constructed a room which is occupied by him and rest land is in his occupation as Sahan. As such, eviction of defendant-respondent no. 10 during the pendency of the suit is not just and proper

6. In case of Dorab Cawasji Warden Versus Coomi Sorab Warden (Supra), the Hon'ble Apex Court hold that if transferee (stranger) get possession of a share in dwelling house the possession becomes a joint possession and is illegal possession. Plaintiffs-co-

owner are entitled to get a decree for eviction or even for injunction to remove where transferee get possession. The said decision will not be applicable in present case as defendant-respondent no. 10 has specifically stated in his show cause that after purchasing 10 Dhur to Jagarnath Sah he constructed room and occupied the same and rest land is used as Sahan.

7. As such, I find no illegality in the impugned order amounting to an abuse of the process of the court for interference in an extra-ordinary jurisdiction under Article 227 of the Constitution of India. Accordingly, this writ application stand dismissed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.10.2016
Transmission Date	