

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14987 of 2013

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Raghawjee Sah S/O Late Dahari Sah R/O Village Bhantapokhar, P.O.
Bhantapokhar P.S. Siwan Muffasil and District Siwan. Petitioner/s

Versus

1. Hari Prasad Sah
2. Shiv Prasad Barnwal
3. Durga Prasad
4. Bidhaya Sagar Prasad
5. Chhote Lal Prasad all S/O Late Raghuni Sah
6. Rajeev Kumar S/O Late Kanhaiya Lal Prasad
7. Asharaniya Devi W/O Late Kanhaiya Lal Prasad all R/O Village Bhantapokhar,
P.O. Bhantapokhar P.S. Siwan Muffasil And District Siwan
8. Sawaria Devi W/O Late Dahari Sah D/O Alagu Sah
9. Chandrawati Devi W/O Raghaw Sah
10. Yogendra Sah S/O Raghaw Sah
11. Asharfi Sah S/O Late Shivpujan Sah
12. Most. Savitri W/O Late Shakhi Chand Sah
13. Virendra Kumar Sah S/O Late Shakhichand Sah all R/O Village Bhantapokhar,
P.O. Bhantapokhar P.S. Siwan Muffasil District Siwan. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Kant, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-12-2016

Heard learned counsel for the petitioner.

By the impugned order, the learned court below has



allowed the prayer for amendment as made by the plaintiff in the plaint.

The plaintiff filed the suit for declaration of title over the 'Rasta' and Gali as described in the plaint. During the pendency of the suit, the plaintiff filed a petition for injunction restraining the defendants from not closing the 'Rasta' and drain. The order for maintaining status quo was passed by the learned court below on the said petition. However, the plaintiff filed a petition under Order 39 Rule 2A against the defendants alleging violation of the interim order of status quo asserting that during the subsistence of the said order the defendants had constructed the staircase and blocked the 'Rasta' and Gali. The said proceeding under Order 39 Rule 2A was dismissed after finding that the plaintiff did not succeed in proving his allegation, and the staircase had been constructed prior to the suit. Thereafter, the plaintiff filed the petition for amendment in the suit for incorporating the averment regarding the construction of staircase and blockage of flow of drain water, and the relief for removal of the staircase and other construction as made by the defendants and to maintain the flow of the drain water. The learned court below has allowed the amendment as prayed and also granted opportunity to the defendant to file additional written statement, if so advised.

Learned counsel for the petitioner has submitted that as in the proceeding initiated at the instance of the plaintiff under Order 39



Rule 2A C.P.C. there was a categorical finding that the defendants did not make the construction during the subsistence of the interim order and those constructions were prior to the filing of the suit, the proposed amendment of the plaintiff is clearly mala fide and intended to supersede the effect of the order by which the objection and prayer under Order 39 Rule 2A has been rejected. It has been contended that the learned court below has wrongly exercised its jurisdiction in allowing the said prayer of the plaintiff. Learned counsel has also placed the order passed by the learned court below under Order 39 Rule 2A as well as the amendment as sought by the plaintiff in order to bolster his submissions.

After considering the submissions, the materials on record and perusal of the impugned order, it is manifest that the trial of the suit has not commenced. The order, which has been passed in the proceeding under Order 39 Rule 2A C.P.C on the allegation of the plaintiff that the constructions were made by the defendants in violation of the interim order of status quo, has definitely been passed in a quasi criminal proceeding as envisaged in the said provision. It is trite that an order passed or a finding recorded in a supplementary proceeding would not be *res judicata* between the parties during the trial of the suit. The issues arising between the parties are to be finally determined by the court on the basis of the evidence adduced during trial. In this backdrop, this Court does not find that the learned court



below has committed any illegality or material irregularity in passing the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.01.2017
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