

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3665 of 2017

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Hem Narayan Mishra, Son of Late Sukhdeo Mishra, Resident of Village-
Muraitha, Police Station- Jaley, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Land and Revenue Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Darbhanga.
3. The Sub-Divisional Officer, Sadar Darbhanga.
4. The Circle Officer, Block- Jaley, District- Darbhanga.
5. The Station House Officer, Police Station Jaley, District- Darbhanga.
6. Birat Mishra, Son of Late Sukhdeo Mishra, Resident of Village-
Muraitha, Police Station- Jaley, District- Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Prem Sheela Pandey, Adv.
For the State : Mr. Rishi Raj Sinha- SC19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 05-07-2017 Heard Ms. Prem Sheela Pandey, learned Counsel

appearing on behalf of the petitioner and Mr. Rishi Raj Sinha,

learned SC-19 appearing on behalf of respondent nos. 1 to 5.

The nature of order this Court intends to pass does
not require issuance of notice to private respondent no.6.

Since the present writ application was registered on
08.03.2017 and till date, no counter affidavit has been filed, this
Court is not inclined to adjourn the matter any further.

The present writ application has been filed for a
direction to respondent authorities to get the encroachment



removed from the land appertaining to Plot No. 4878, situated in Village Muraitha, P.S. Jaley, District Darbhanga. Further prayer has been made for disposal of the representation dated 24/01/2017 made by the petitioner before Respondent No.3, the Sub-Divisional Magistrate, Sadar Darbhanga.

It is submitted by the learned counsel for the petitioner that the land in question is a pathway which was being constructed by the petitioner, co-sharer Satya Narayan Mishra and respondent no.6, Birat Mishra. The petitioner filed Partition Suit No. 9 of 1994/24 of 1997, wherein, respondent no.6 was defendant 1st set and such partition suit was partially decreed vide judgment and decree dated 29th July 2002, passed by learned Sub-Judge-4th, Darbhanga whereby the defendant 1st set, respondent no.6 was permanently restrained from putting any sort of obstruction on the private pathway left for easy access of the parties including the petitioner who was a plaintiff in the suit. On the basis of the partition decree, a Panchnama was prepared between the parties on 17/05/2010 whereby the parties agreed not to encroach the pathway. In the meantime, Title Appeal No. 27 of 2012 was filed, but the Title Appeal was remanded back to Sub-Judge-1, Darbhanga by the then Ad-hoc District and Sessions Judge, Darbhanga vide judgment dated 15.06.2012, and consequently



Title Suit No. 09 of 1994 is pending before Sub-Judge-1, Darbhanga.

It is further submitted by learned counsel for the petitioner that in spite of initial judgment and decree, Respondent No.6 has constructed a wall on the private pathway.

It is submitted by learned counsel for the respondent State that vide order dated 15/06/2012, the Ad-hoc District and Sessions Judge, Darbhanga remanded Title Suit No.9 of 1994 to the learned Sub-Judge-I, Darbhanga. Moreover, the dispute is with regard to private pathway between the petitioner, co-sharer and respondent no.6 and above all, the title appeal is pending with regard to land in question.

Considering the rival submission of the parties, this Court is of the view that since the title partition suit is still pending, no proceeding can be initiated for removal of the encroachment under the Bihar Public Land Encroachment Act, 1956. Moreover, this is not in dispute that the pathway has been constructed on a private land through contribution between the petitioner and his co-sharers. The issue, whether the encroachment can be removed during pendency of an appropriate suit or not, has been considered by a Bench of this Court in the case of **Jai Narayan Bhagat and Anr. Vs. The State of Bihar and Ors,**



2011 (4) PLJR 504, where the suit was dismissed for default and the restoration application was pending, even then, this Court deprecated the demolition of suit property. Paragraph no. 22 reads as follows:-

“Admittedly, a civil dispute is pending between the State and the petitioners with regard to title and possession over some plots. Whether or not the dwelling demolished by the respondents is situated over any of the plots which is the subject matter of the title suit, is yet to be determined by a civil court of competent jurisdiction and each party has its own stand. It is another story that the suit filed by the State stands dismissed for default and although a restoration application is pending but the suit is yet to be restored. Thus, at present, no proceeding is pending in between the parties.”

In view of the discussion made above, the remedy for the petitioner lies before the Sub-Judge, where the title partition suit is pending.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

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