

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No. 287 of 2016

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1. Jiwachh Jha son of Jasodhar Jha resident of village- Dharampur PS- Rosera,
District – Samstipur.
 2. Mithilesh Das son of Late Satyadeo Das resident of village Dharampur, PS,
Rosera District Samastipur.

.... Appellant/s

Versus

1. Ganesh Jha
2. Mahesh Jha Both sons of Late Yogendra Jha both are residents of village-
Dharampur, P.O. Jakhar, P.S. Rosara, District-Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhananjay Kumar, Adv.

For the Respondent/s : Mr. Bishwanath Chaudhary, Adv.
Mr. Mritunjay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-05-2017

Heard learned counsel for the parties.

The present application under Article 227 of the Constitution of India has been filed praying for quashing the order dated 27.04.2016 passed in M.A. No. 11 of 2015/12 of 2015 whereby the appellate court below has dismissed the appeal affirming the order for grant of injunction as prayed by the plaintiffs in the suit.

The dispute between the parties in the suit is over 27 decimal of land of C.S. Plot No. 2117 which was recorded as ‘Gairmajarua Khas Kism Garha’. The suit has been filed in



representative capacity asserting that the suit land 'Garha' is being used by the public at large of the village for the purpose of drinking water for the cattle as well as also for bathing and irrigation purpose. The defendants, however, claimed the suit land to be the private property of 'Mahanth' and claimed their entitlement to use the same as their private land. It would be pertinent to mention here that the defendant 2nd set by sale deed dated 22.06.2011 has sold the suit land to the defendant 1st set. The plaintiffs filed the petition under Order 39 Rule 1 (2) C.P.C. praying for grant of injunction restraining the defendant 1st set from filling up the suit land and from making construction over the same.

The trial court found the ingredients of injunction i.e. prima facie case, balance of convenience and irreparable loss and injury existing in favour of the plaintiffs and granted the prayer for injunction. The appellate court, in appeal by the defendants, has upheld the order for injunction passed by the trial court and dismissed the appeal by the impugned order.

Learned counsel for the petitioners has submitted that both the courts below have failed to appreciate the facts and circumstances of the case and have wrongly allowed the prayer for injunction as prayed by the plaintiffs. It has been contended that the suit land along with other lands has already been declared to be the



personal properties of the predecessor of the defendant 2nd set namely Mahanth Satyadeo Das and therefore there was no prima facie case in favour of the plaintiffs to claim any right by the public over the suit land. It has also been contended that the plaintiffs and their family members themselves have purchased the lands from the defendant 2nd set by registered sale deeds and therefore also there is no substance in the claim of the plaintiffs denying the right, title and interest of the defendant 2nd set over the suit property. Learned counsel for the petitioners has extensively placed the documents annexed with the application as well as supplement affidavit thereto to persuade this Court that the order of injunction passed by both the courts below cannot be legally acceptable.

Learned counsel for the plaintiff-respondents, however, has supported the impugned order and has submitted that in view of the concurrent findings by both the courts below, this application under Article 227 of the Constitution of India is devoid of merit.

After considering the submissions on behalf of the parties and the materials on record, it is manifest that the suit has been filed in representative capacity by the plaintiffs claiming the right of user over the suit land by the public at large of the village. From the averments made in the written statement (Annexure-8), it is apparent that in paragraph-10, the nature of the suit land initially as a small



tank has been admitted by the defendants who however, have stated that the said 'Garha' was gradually filled up and become culturable. Both the courts below have taken into notice the report of the advocate commissioner appointed in the suit for local inspection from which it has transpired that the soil in the disputed suit land 'Garha' was found to be newly filled up. It is also pertinent to mention here that the defendant –petitioners have not denied the fact that they intend to make the construction over the suit land 'Garha'.

At this juncture, it would be apposite to mention that emphatic reliance has been placed on behalf of the petitioners on the decision passed in T.S. No. 124 of 1966 but during the course of submission, it has been accepted that in the said suit the plaintiffs or any member of the public were not parties and only the Bihar State Hindu Religious Trust Board was the party defendant in that suit. It has also not been pleaded or could be shown during the course of submission on behalf of the petitioners that the plaintiffs or their predecessors have purchased any part of the suit land from the defendant 2nd set. It is also not the case of the petitioners that the defendant 2nd set has got no other lands as well besides the suit land. Therefore, this Court does not find substance in the contention that the plaintiffs would be estopped from denying the title of the defendant 2nd set over the suit land. However, in any view of the



mater, the suit is definitely not filed for denying the title of the defendant 2nd set but for declaration of the prescriptive right of user acquired by the public at large over the suit land.

Even otherwise also, both the courts below have recorded concurrent findings of fact for grant of injunction in favour of the plaintiffs and this Court has not been persuaded to hold that the discretion exercised by the learned courts below in granting the injunction to the plaintiffs as prayed is perverse, unreasonable or against the settled principles of law. This Court, therefore, is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

In the ultimate eventuate, this application is dismissed.

(V. Nath, J)

Devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.05.2017
Transmission Date	

