

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.318 of 2014

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1. Shaila Devi W/o - Jitendra Prasad Resident of Village - Punha, P.S. - Rahue, Distt. - Nalanda.
 2. Kamlesh Kumar Son of Devendra Prasad Resident of Village - Punha, P.S. - Rahue, Distt. - Nalanda.
 3. Mahesh Prasad Son of Thakur Prasad Resident of Village - Dariyarpur, P.S. - Bind, Distt. - Nalanda.
 4. Rekha Devi W/o - Sitaram Prasad Resident of Village - Bind, P.S. - Bind, Distt. - Nalanda.
 5. Ramanand Prasad Son of Rajendra Raut, Resident of Village + P.S. - Bind, Distt. - Nalanda.
 6. Ashiwani Kumar Son of Prakash Prasad Resident of Village - Sugia, P.S. - Shekhopur, Sarai, Distt. - Nalanda.
 7. Manju Devi W/o - Anil Kumar Resident of Village - Kathauli, P.S. - Rahue, Distt. - Nalanda.
 8. Sanjay Prasad Son of Sitaram Prasad Resident of Village - Sadarpur, P.S. - Bind, Distt. - Nalanda.
 9. Badhan Jamadar, Son of Late Mushi Jamadar, Resident of Village - Bind, P.S. - Bind, Distt. - Nalanda.
 10. Sanjeeta Devi W/o - Munna Prasad Resident of Village - Dariyapur, P.S. - Bind, Distt. - Nalanda.
 11. Sarita Devi W/o - Birendra Prasad Resident of Village - Bind, P.S. - Bind, Distt. - Nalanda.
 12. Kishori Sao Son of Late Govind Sao, Resident of Village - Bind, P.S. - Bind, Distt. - Nalanda.
 13. Puspa Devi W/o - Manoj Kumar Resident of Village - Shahwajpur, P.S. - Ashthwa, Distt. - Nalanda.
 14. Sudha Devi W/o - Devendra Prasad Resident of Village - P.S. - Bind, Distt. - Nalanda.

.... Appellants.

Versus

1. The State of Bihar through Collector, Nalanda.
2. The Circle Officer, Bind, District - Nalanda. Respondents.

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Appearance :

For the Appellant/s : Mr. T.N. Mattin, Sr. Adv.
Mr. Surendra Kumar, Adv.
For the Respondent s : Mr. Binod Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 28-11-2017

Heard learned counsel for the appellants and the
respondents-State of Bihar on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred



against the order dated 30.04.2014 passed by the Sub Judge-7, Nalanda at Bihar Sharif in Title Suit No.108 of 2013, whereby the learned lower court rejected the injunction petition dated 29.04.2013 filed by the appellants.

3. The factual matrix of the case is that appellants filed Title Suit No.108 of 2013 for declaration that the land in question is not a public land and the land encroachment proceeding under the Bihar Public Land Encroachment Act is without jurisdiction and also to restrain the respondents State of Bihar from dismantling the houses standing on it and from making any alteration in the property in question.

4. During pendency of the aforesaid case, the plaintiffs/ appellants filed an injunction petition dated 29.04.2013 to restrain the defendants/respondents from dismantling the houses standing on the suit land and from changing nature of the same as detailed in the said petition with the case in succinct that Khata No.211, Khesara No.5765, admeasuring 56 decimals located in village Bind, P.S. Bind, District Nalanda was a Gairmazarua Malik land. The Jamindar of the said land settled it in favour of Hardeo Narain vide hukumnama in Fasli 1351 corresponding to 1944 who came in possession of the same and used to pay the rent to the ex-landlord. After vesting of the aforesaid property in the



State of Bihar, he paid rent to the State of Bihar. After the demise of said Hardeo Narain his two sons, namely, Satish Singh and Nisit Singh came in possession of the aforesaid land. Both sons amicably partitioned the entire properties left by their father along with the disputed land and the property in question came into share of Satish Singh. The said Satish Singh executed a registered power of attorney in favour of Jitendra Kumar on 10.06.2005 to execute the sale deed regarding the property in question and the said Jitendra Kumar executed the sale deeds in favour of plaintiffs/ appellants. The plaintiffs/appellants have their houses on the aforesaid property but the defendants/respondents State of Bihar is adamant to dismantle the houses and change the nature of the suit land. Hence, the plaintiffs/appellants have got prima facie case and balance of convenience also lies in their favour and in case of not restraining the defendants/respondents from dismantling the houses and changing the nature of property, irreparable injury will be caused to them.

5. The defendants/respondents filed show cause against the said injunction petition stating that admittedly the property in question was Gairmazarua Malik land and after abolition of Jamindari in the State of Bihar, it came in possession of the State of Bihar. The disputed land was never settled by ex-



landlord to Hardeo Narain and no Register-II was prepared in his name. So the son of Hardeo Narain, namely, Satish Singh had no authority to execute power of attorney in favour of Jitendra Kumar and the Jitendra Kumar had no right to execute sale deed in favour of the plaintiffs/appellants. It is also stated that the plaintiffs/appellants have encroached the public land so Encroachment Case No.14/2012-13 has been initiated against them and thus, the plaintiffs/appellants have got no prima facie case and balance of convenience also does not lie in their favour.

6. After hearing the parties and perusing the record, the learned lower court rejected the aforesaid injunction petition of the plaintiffs/appellants.

7. Being aggrieved and dissatisfied with the aforesaid rejection order, the plaintiffs/appellants have preferred this miscellaneous appeal.

8. It is submitted on behalf of the appellants that admittedly the property in question was the Gairmazarua Malik land. Its ex-landlord settled the disputed land to Hardeo Narain through Hukumnama in Jeth 1351 Fasli i.e. in the year 1944. After settlement said Hardeo Narain came in possession of it and was paying rent to the ex-landlord and after abolition of zamindari and vesting of the estate in the State of Bihar, he was paying rent to



the State of Bihar. Said Hardeo Narain had two sons, namely, Satish Singh and Nisit Singh and there was partition between them. Resultantly, the property in question came into share of Satish Singh who executed a registered power of attorney in favour of Jitendra Kumar to sell the property in question. The said Jitendra Kumar executed sale deeds in favour of appellants regarding the same and the appellants are having dwelling houses over it so they have got prima facie case. It is further submitted that the encroachment proceeding is being prosecuted against the said Jitendra Kumar and not against the appellants, despite the knowledge of the aforesaid sale deeds in favour of the appellants and their possession over the same. It is also submitted that the complicated question of title cannot be decided in such a summary encroachment proceeding rather the same should be decided by the Civil Court in the title suit. The learned lower court has rejected the aforesaid petition of the appellants mainly on the ground of pendency of the aforesaid encroachment proceeding against the appellants and finding entry of alleged encroachment made by the appellants in Register-II. The learned lower court has not considered the merit of the case and the arguments advanced on behalf of the appellants and without considering the same rejected the injunction petition. Hence, the impugned order is



liable to be set aside.

9. On the other hand, learned counsel for the respondents has submitted that the land in question is a Gairmazarua Malik land recorded in the name of ex-landlord and at the time of abolition of zamindari it came in possession of the State of Bihar. It is further submitted that the said land was never settled by ex-landlord to Hardeo Narain and no Register-II was prepared in the name of Hardeo Narain and heir of Hardeo Narain had no right to execute power of attorney in favour of Jitendra Kumar and Jitendra Kumar had no right to sell the said land to the appellants. It is further submitted that the plaintiffs/appellants happen to be encroacher of the public land and for their removal from the property in question encroachment proceeding has been initiated against them and the learned lower court has rightly rejected the injunction petition filed by the appellants finding no prima facie case and balance of convenience in their favour.

10. From perusal of the record, it appears that that admittedly the property in question was Gairmazarua Malik land. Annexure-2 series filed by the appellants indicates that Haji Sayed Sarfuddin Motuali of Wakf Estate, Most. Bibi Sogra happens to be Zamindar of the aforesaid land, he settled the aforesaid land in favour of Hardeo Narain vide Hukumnama in the Fasli 1351



corresponding to 1944 and the said Hardeo Narain used to pay the rent to the said Jamindar and thereafter to the State of Bihar against the rent receipt. As per the case of the appellants, the said Hardeo Narain died leaving behind his two sons, namely, Satish Singh and Nisit Singh and after partition between the two sons, the property in question came in share of Satish Singh and the said Satish Singh executed power of attorney in favour of Jitendra Kumar to execute the sale deed regarding the property in question. Said Jitendra Kumar executed sale deeds in favour of the plaintiffs regarding the said property. Annexure-3 filed by the appellants indicates that the notice has been issued by the office of the Circle Officer, Bind, Nalanda to Jitendra Prasad for removal of encroachment and vacating the property in question. The contents of the said notice indicates that it is in the knowledge of the respondents that the said Jitendra Kumar has executed sale deeds in favour of some persons. It also indicates that the house is located over the said property. This Court in **Smt. Uma Devi Sinha Vs. State of Bihar and others** reported in **2001 (2) PLJR 587** has held that where a serious question of title is involved, it cannot be decided in a summary proceeding under the Land Encroachment Act. The proper remedy is to get the right declared by competent civil court and until the right is declared in favour of



the State the persons in occupation cannot be evicted by summary proceeding under the 1956 Act. Admittedly, the appellants are in possession of the land and as such they cannot be evicted by summary proceeding unless the right and title is declared by the competent Civil Court in favour of the respondent-State of Bihar. The Hon'ble Apex Court in **Government of Andhra Pradesh Vs. Thummala Krishna Rao and another** reported in **AIR 1982 Supreme Court 1081** has also been pleased to hold that summary proceeding for eviction can be resorted to by the Government only against the persons who are in unauthorized occupation of any land which is the property of Government. If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy for evicting the person who is in possession of the property under a bona fide claim or title.

11. In view of the facts and circumstances, I find that the appellants have got prima facie case regarding the property in question and balance of convenience also lies in their favour and if they will be evicted from the property in question and the property will be dismantled in a summary proceeding, as initiated by the respondent State, irreparable loss would be caused



to them. The learned lower court appears to have wrongly and illegally passed the impugned order without considering the aforesaid aspects of the case merely finding that the encroachment proceeding is pending against the appellants and also finding that in Register-II entry of the encroachment of the property in question by the appellants have been made.

12. Accordingly, this miscellaneous appeal is allowed. The impugned order passed by the learned lower court is set aside. The respondents are directed not to dismantle the houses standing over the property in question, if not dismantled or change the nature of property in question during the pendency of the aforesaid suit. The learned lower court is directed to dispose of the suit as soon as possible preferably within six months from the date of receipt/production of a copy of this order. Both the parties are also directed to extend all sorts of cooperation in disposal of the suit at the earliest.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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