IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3396 of 2016

==========

Mahesh Prasad Gupta @ Pappu, Son of Late Laxmi Sah, Resident of Village -Aurahi, Tola - Suryaganj Bazar, Police Station - Gamharia, District - Madhepura.

.... Petitioner

Versus

1. The State of Bihar through District Magistrate, Madhepura.
2. The Additional Collector, Madhepura.
3. The Deputy Collector Land Reforms, Madhepura.
4. The Circle Officer, Gamharia, District - Madhepura.
5. Kapleshwar Sah, Son of Late Sital Sah,
6. Sulekha Devi, Wife of Pintu Gupta, Both Residents of village - Aurahi, Tola - Suryaganj, Police Station - Gamharia, District - Madhepura.

.... Respondents

==========

Appearance :
For the Petitioner/s : Mr. Uday Chand Prasad, Advocate
For the Respondent/s : Mr. Kaushal Kr. Jha, AAG-8

==========

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 04-07-2017 Heard Mr. Uday Chand Prasad, learned counsel for the petitioner and Mr. Kaushal Kumar Jha, learned A.A.G.-8 for respondent nos. 1 to 4.

The present Writ application has been filed for a direction to the respondent authorities to get the illegal encroachment, made by respondent nos. 5 and 6, removed from the petitioner's raiyati land appertaining to Khata No. 714, Plot No. 2716 area 0.1 ½ decimals, situated in Mauza Aurahi Tola, Suryaganj Bazar in the District of Madhepura.

The factual matrix of the case would unveil that 0.6 decimals of land of Khata No. 339 old/714 new, Plot No.2061,

WEB COPY

2062 old/2716 new and 0.7 decimals of land of Khata No. 339 old/188 new, Plot No. 2063,2064 old/2715 new, total area of 13 decimals, situated at Mauza – Aurahi in the district of Madhepura has been purchased by the petitioner from one Most. Janki Devi, wife of Late Ganga Sah through registered Sale Deed dated 14.6.1995. It is claimed by the petitioner that after purchase, he came in peaceful possession of the land in question and has been making payment of the rent to the State of Bihar. Subsequently, respondent no. 5 and his sons filed Title Suit No. 15 of 2013 on 12.5.2013 before the learned Sub-Judge, Madhepura making the petitioner as defendant in the said suit claiming title over the land in question by virtue of mutual partition and declaring the sale deed of the petitioner as null and void. The said suit got dismissed vide order dated 18.2.2014 due to non-deposit of requisite Court fee. In April, 2014, the respondent nos. 5 and 6 along with others forcefully encroached 0.1 ½ decimals of land of Khata No. 714 Plot no. 2716 of the petitioner. The petitioner represented before the District Magistrate, Madhepura against the illegal encroachment. Consequently, respondent no. 2, the Additional Collector, Madhepura, vide order dated 20.5.2015 directed the respondent no. 4, Circle Officer, Gamharia to conduct an enquiry and to take needful action. The petitioner also filed Informatory

WEB COPY

Petition No. 744 of 2015 on 29.6.2015 in the Court of the learned C.J.M., Madhepura to the effect that respondent nos. 5 and 6 and others have encroached his land and they are threatening the petitioner. The respondent no.4 during enquiry, found that the land of the petitioner has been encroached by respondent nos. 5 and 6, hence, issued notice and directed them to submit their defence. Respondent nos. 5 and 6 did not appear in pursuance to the said notice, upon which, respondent no. 4, the Circle Officer, Gamharia, vide notice dated 12.8.2015 and 4.9.2015, as contained in Annexure 7 series, directed them to remove the alleged encroachment. Subsequently, respondent no. 4, the Circle Officer, Gamharia vide notice dated 28.11.2015, as contained in Annexure 8, again directed respondent nos. 5 and 6 to remove encroachment, but till date the said encroachment has not been removed**.**

It is submitted by learned counsel for the petitioner that the petitioner holds title over the land in question, but he has illegally been dispossessed by the respondent nos. 5 and 6. Since the administrative authorities are not taking action for removing the encroachment, hence this writ application.

It is submitted by learned AAG 8, relying upon the counter affidavit filed on behalf of respondent nos. 1 to 4, that the dispute is with regard to title, between the petitioner and

WEB COPY

respondent nos. 5 and 6, which gets reflected from the plaint of the Title Suit, wherein title has been claimed by respondent nos. 5 and 6. Though the respondent no.4, Circle Officer, Gamharia conducted an enquiry and issued notice to respondent nos. 5 and 6 but the disputed question of title can only be decided by a court of competent jurisdiction. It is further submitted that Respondent no. 6 had filed a case before the DCLR, Madhepura under Bihar Land Disputes Resolution Act, 2009, against the petitioner, with regard to the land in question which was numbered as Case no. 436 of 2012, wherein vide order dated 31.1.2013, the DCLR dismissed the claim of respondent no. 6 and directed respondents to take recourse to a competent Civil Court. The said order has been brought on record as Annexure A to the counter affidavit. Hence, in view of the aforesaid facts, the issue relating to disputed question of fact cannot be resolved in the present proceeding in exercise of jurisdiction under Article 226 of the Constitution of India.

Having heard learned counsels for the parties, this Court is of the view that to decide the issue whether the petitioner has title over the land in question or he is entitled to recovery of possession, the foundational facts are not on record. To decide such disputed question of facts requires leading of evidence.

WEB COPY

It is well settled law that serious disputed question of fact cannot be looked into in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. There is no binding rule that the High Court cannot try the issue of facts in a writ application, but in such cases where relief has been prayed for on the basis of disputed question of facts, which cannot be determined without leading of evidence, the Court should ordinarily relegate the parties aggrieved to agitate the issue before Civil Court. The Supreme Court in the case of State of Rajasthan Vs. Bhawani Singh and Others, reported in AIR 1992 SC 1018, held that disputed questions relating to title cannot be satisfactorily gone into or adjudicated upon in a writ proceeding. Paragraph 9 reads as follows:

> "9. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition."

In each case, the court has to consider whether the

WEB COPY

party seeking relief has an alternative remedy which is equally efficacious. Hence, when the party claims title or possession over the property then in such case equally efficacious remedy is by way of suit.

In the case of D.L.F. Housing Construction (P) Ltd Vs. Delhi Municipal Corpn. and Others, reported in (1976) 3 Supreme Court Cases 160, the question related to the right of ownership over a land, a Four Judge Bench of the Apex Court held that in a case where the basic facts are disputed and complicated question of law and fact depending on evidence are involved, the writ court is not a proper forum for seeking relief. Paragraph 18 reads as follows:

> "18. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the

WEB COPY

> appeal with costs. The appellants may if so advised, seek their remedy by a regular suit."

Similarly, the Apex Court in the case of Union of India and Others Vs. Ghaus Mohammad reported in AIR 1961 Supreme Court 1526, while dealing with the issue whether the respondent in the said case was foreigner or not, held that a proceeding under Article 226 of the Constitution of India is not an appropriate forum to seek relief if such relief is based on disputed question of facts. Paragraph 9 reads as follows:

> "9. The question whether the respondent is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Art. 226 of the Constitution would not be appropriate for a decision of the question. In our view, this question is best decided by a suit and to this course neither party seems to have any serious objection. As we propose to leave the respondent free to file such a suit if he is so advised, we have not dealt with the evidence on the record on the question of the respondent's nationality so as not to prejudice any proceeding that may be brought in the future."

In the present case, it is true that the petitioner is

WEB COPY

claiming title by virtue of a Sale Deed whereas from the plaint of Title Suit No. 15 of 2013, though dismissed due to non-deposit of adequate court fee, it appears that respondent nos. 5 and 6 claimed the property in question by virtue of mutual partition. The foundational facts are not before this Court to decide the issue. The question of title being disputed further gets reflected from the order of the DCLR dated 31.1.2013 passed in Case No. 436 of 2012, where the respondent no. 6 has claimed title over the property.

Accordingly, the present writ application is disposed of with a liberty to the petitioner to avail alternative remedy before the appropriate forum.

(Dinesh Kumar Singh, J)

Amrendra/-Anil/

U			

WEB COPY