

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1438 of 2009

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Brindaban Tiwary (since deceased), son of late Muridhar Tiwary, resident of Village-Darauli, P.O. and P.S. Darauli, District –Siwan.

1 (a) Most. Sona Devi wife of late Brindaban Tiwary

1(b) Manoj Tiwary

1(c) Rajesh Tiwary

1(d) Umesh Tiwary

1(e) Anil Tiwary

1(f) Dinesh Tiwary

All sons of late Brindban Tiwary

.... Petitioner/s

Versus

1. Awadhesh Tiwary son of late Radha Mohan Tiwary, resident of village, P.O. and P.S.-Darauli, District-Siwan.

2. Parsuram Tiwary, s/o late Ram Rekha Tiwary, resident of village, P.O. and P.S.-Darauli, District-Siwan.

3. Chandrika Yadav, s/o Shitala Yadav, R/o Vilage Done Khurda, P.S. Darauli, District-Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : None

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 23-05-2017

This is an application filed under Order 39 Rule 2A of the Code of Civil Procedure and the complaint made in this application is that in spite of injunction granted by this Court in M.A. No.59 of 2007 on 28.09.2007, the respondents have alienated certain property thereby committing breach of the injunction granted by this Court. Accordingly, the prayer made is to take action in the matter.

Pertaining to dispute with regard to Cinema Hall in question, in a suit filed bearing Title Suit No.37 of 2005, the learned Trial Court rejected the application for temporary injunction prayed for



by the appellant and, therefore, challenging the order rejecting injunction, the appeal was filed before this Court. The said appeal was finally disposed of on 28.09.2007 and the parties were restrained from alienating any portion of the suit property during the pendency of the suit.

Inter alia contending that in spite of the aforesaid injunction granted, on 16.03.2009, the respondents have removed the projector and certain generator and valuable articles from the Cinema Hall and sold them in the open market thereby violating the injunction granted, the application in question was filed.

On notice being issued, the respondents have filed a detailed show cause which goes to show that according to the respondents, the applicant and various other persons entered into the suit premises in question in the night of 16.03.2009 and it is alleged that they committed theft and robbery in the suit premises and removed the articles as alleged in the application and for this a complaint case bearing Complaint case no.1898 of 2009 has been filed which is pending in the Court of Chief Judicial Magistrate for offences under Sections 323, 341, 380, 427, 506 and 34 of the Indian Penal Code. The complete order sheets and proceedings of the complaint case pending in the Court of Chief Judicial Magistrate have been filed as Annexure-B and C series and it is seen that a charge has also been framed for the offences alleged.



That being so, there are serious dispute with regard to breach of the injunction granted, affidavits and counter affidavit go to show that the allegations are diverse in nature and the matter is pending enquiry before the Chief Judicial Magistrate in the complaint case bearing Complaint Case No.1898 of 2009. After the aforesaid show cause was filed by the respondents on 03.08.2010, there is no rebuttal to the same. No supplementary affidavit to the show cause notice has been filed by the applicant and respondent No.3 has filed further supplementary show cause to show that the complaint case is pending.

In view of the aforesaid factual scenario, it is not a fit case where now pending final adjudication of the complaint case before the Chief Judicial Magistrate, action is required to be taken in the matter. The application is dismissed and liberty shall be available to the parties to take recourse to such remedy as may be permissible after Complaint Case No.1898 of 2009 is decided by the Chief Judicial Magistrate, Siwan.

With the aforesaid, the matter stands disposed of.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.05.2017
Transmission Date	

