

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2238 of 2014

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1. Krishnandan Chauhan S/O Late Ram Chander Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
 2. Awadhesh Chauhan S/O Late Ram Chander Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
 3. Alok Kumar S/O Krishnandan Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
 4. Rajiv Kumar S/O Krishnandan Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
 5. Awinash Kumar S/O Awadhesh Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
 6. Abhishek Kumar S/O Awadhesh Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)

.... Petitioners

Versus

1. Naresh Chauhan S/O Late Makasudan Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
2. Suresh Chauhan S/O Late Makasudan Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
3. Ramashray Chauhan S/O Late Makasudan Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
4. Ram Janam Chauhan S/O Late Makasudan Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
5. Om Prakash Chauhan S/O Late Makasudan Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
6. Arjun Chauhan S/O Late Karu Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)
7. Ramjit Chauhan S/O Late Karu Chauhan Resident Of Village- Brindaban, Post- Chero, P.S- Sarmera, District- Bihar Sharif (Nalanda)

.... Respondents

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Appearance :

For the Petitioners : Mr. Ram Naresh Sharma, Advocate
For the Respondents : Mr. Brajnandan Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

5 09-02-2018 Learned counsel for the petitioners filed supplementary affidavit in support of his original application as well as a counter



affidavit by way of reply to the affidavit filed on behalf of the respondents.

2. Heard learned counsel for the petitioners as well as the respondents.

3. This application has been filed for quashing the order dated 19.09.2012 passed by Sub Judge-II, Biharsharif at Nalanda in Title Suit No.200 of 2011 and also the order dated 22.11.2013 passed by Ist Additional District Judge, Biharsharif at Nalanda in Miscellaneous Appeal No.26 of 2012. The learned Sub Judge as per impugned order dated 19.09.2012 allowed the petition of the plaintiff filed under Order XL Rule 1 of the CPC and appointed a receiver for the management of the suit property. The respondents-defendants filed Miscellaneous Appeal No.26 of 2012 which after hearing was dismissed and the order appointing receiver by the court below was confirmed.

4. It has been submitted that the respondents Ist party filed the aforesaid Title Suit200 of 201 for declaration of their right and title over the property measuring 7 acres 4 decimals land as mentioned in schedule-3 of the plaint and also for decree of injunction restraining the defendants from causing any interference and executing any documents with respect to the same. The petitioners appeared and denied the claim of the



plaintiff. The plaintiff filed a petition for appointment of receiver which after hearing was allowed.

5. The contention of learned counsel for the petitioners is that the petitioners are owner of the suit land. The ancestor of the petitioners had purchased land measuring 4 Acres 40 decimals out of suit land from Agnu Nonia in whose name, the land stands recorded. The plaintiffs claimed to be heir of said Agnu Nonia. The plaintiffs are great-grand-son of Agnu Nonia. The petitioners further claim that after purchase, the ancestors of the petitioners came in possession over the suit land and in due course they exchanged some of the land also with different Raiyats by virtue of registered deed of exchange dated 30.09.1994. The petitioners further claim some land by virtue of registered sale deed dated 12.10.1955 which was executed by Sukar Jamadar the ancestor of the plaintiffs. The petitioners further filed registered sale deed dated 14 Fasli 1329 whereunder the petitioners acquired land measuring 71 decimals from the ancestor of the plaintiffs. The ex-landlord filed rent suit no.1296 of 1949 against the grand-father of defendant no.1 in the Court of Munsif, Barh in which the disputed land was the subject matter of the suit. On the basis of these documents, the petitioners assert that they are bonafide owner of the land in dispute. The learned trial Court as well as the appellate



court without perusing these documents and assigning any reason has appointed the receiver to manage the suit property. In this regard, the learned counsel for the petitioners cited ruling reported in 2007(3) PLJR page-713 wherein this Court at para-11 has observed as follow:-

“11. In a plethora of other decisions various High Courts as well as the Hon’ble Apex Court decided the various issues with respect to the appointment of a receiver in a suit in view of the provisions of law and various case laws. Taking into account the specific provisions of law as well as the views expressed in various decisions as aforesaid, the Madras High Court passed a land mark judgment in case of T.Krishnaswamy Chetty vs. C. Thangavelu Chetty and Others, reported in AIR 1955 Madras 430 prescribing the five essential requirements for appointment of receiver. The said five principles which were laid down by the said decision as Punch Sadachar, are as follows:

(1) Appointment of a receiver pending a suit is a matter resting in the discretion of the court;

(ii) No receiver should be appointed except upon proof that plaintiff has a very excellent chance of succeeding in the suit;

(iii) Plaintiff must show some emergency or danger or loss demanding immediate action;

(vi) Receiver should not be appointed where it has the effect of depriving a defendant of his ‘*de facto*’ possession; and

(v) the court should look into the conduct of the party who makes application.”

6. Both the court bellows has simply observed that the plaintiff has prima-facie case but none of the courts below discussed about the documents which were produced by the petitioners. The sale deed of these petitioners relate to year 1934.



The plaintiff has not challenged the genuineness of documents of these petitioners on the basis of which they claim title over the suit property. In a case of appoint of receiver, the plaintiff is required to establish excellent chance of his success in the suit. The plaintiffs have failed to prove their case of emergency and danger or loss to the suit property. The petitioners claim that they are in possession of the suit property since the time of their ancestor. In the case of Bhubaneshwar Prasad Narain Sinha (Supra) and T.Krishnaswamy Chetty (Supra), it was held as follows:-

“An analysis of the case laws on the point clearly brings out the duty of the court to be very cautious in allowing an application for appointment of a receiver in a case where the defendant is in actual possession of the property. In such a case it has to require special reasons to be proved for interfering with such possession. At the same time the court has to bear in mind that this is a remedy which may be the only remedy open to a plaintiff for the maintenance and preservation of the property in suit. It is true that a court will require a plaintiff to show a very strong case of title and his right to possession as also that the property is in danger of being wasted.”

7. In view of above discussions, I find that the plaintiffs have failed to made out a case for appointment of receiver and the court below has decided the matter in complete violation of the settle principle of law as discussed above.

8. In the result, the impugned order passed by the court



below as well as Ist appellate court is set aside and the order appointing receiver is set aside.

9. This application is allowed.

(Sanjay Kumar, J)

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