

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3685 of 2011

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1. Smt. Sunita Devi, wife of late Arun Prakash.
 2. Abhinait Prakash, son of late Arun Prakash.
 3. Nilima Kumari, daughter of late Arun Kumar.
 4. Sonali Kumari, daughter of late Arun Prakash,
All are residents of village- Bharaulia, P.S.- Motihari Muffasil, District- East
Champanan.

.... Petitioner/s

Versus

- 1(a). Lal Babu Singh, son of late Yogendra Singh.
- 1(b). Shyam Babu Singh, son of late Yogendra Singh.
- 1(c). Ghanshyam Singh, son of late Yogendra Singh.
- 1(d). Punam Devi, daughter of late Yogendar Singh.
- 1(e). Ramawati Devi, daughter of late Yogendra Singh.
- 1(f). Kalawati Devi, daughter of late Yogendra Singh.
- 1(g). Urmila Devi, daughter of late Yogendra Singh.
2. Brajesh Kumar, son of Sri Lal Babu Singh,
All are residents of village- Dheng, P.S.- Dheng, District- Sitamarhi and at
present residing in village- Bharaulia, P.S. Motihari Mufassil, District- East
Champanan.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akashdeep, Advocate. Mr. Shyameshwar Kr. Singh, Advocate.
For the Respondent/s	:	Mr. Ashish Giri, Advocate. Mr. Sumit Kr. Jha, Advocate. Mr. Rajat Kr. Tiwary, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-08-2018

This application has been filed by the defendant of Title
Suit No. 71 of 2009 pending in the court of Munsif, Sadar, Motihari,
East Champanan for quashing the order dated 04.11.2010 passed by
learned 2nd Additional District Judge, Motihari in Miscellaneous
Appeal No. 15 of 2010 and order dated 06.05.2010 passed by learned
Munsif, Sadar, Motihari in Title Suit No. 71 of 2009.



2. Heard both sides and perused the record.

3. The respondent no. 1 (since dead) and respondent no.2 filed Title Suit No. 71 of 2009 before the Munsif, Sadar, Motihari, East Champaran against the defendant-petitioner for adjudication of their title and further declaration that possession of defendant (petitioner) over the land in question is illegal. The plaintiffs further sought relief for recovery of possession through the process of the court besides direction to the defendant-petitioner to maintain status quo and not to make any new construction till the disposal of the suit. The petitioner claims title over the land measuring 3 dhur comprised in plot no. 147 as mentioned in schedule 3 of the plaint besides other plots by virtue of registered deed of gift dated 27.07.1974 executed by one Chhawohar Kuer in his favour. The plaintiff no. 1 constructed the house over the said land from northern side consisting of three tiled roof house. The plaintiffs when in order to make new construction started demolishing the same, the defendant started causing interference in their possession for which a proceeding under section 144 of Code of Criminal Procedure was initiated. The plaintiffs have further alleged that on 28.08.2009 the defendant forcibly took possession over the said land after demolishing their house. The respondents-plaintiffs filed an injunction petition praying therein to injunct the defendant from making any construction over the suit land.



The prayer of injunction was opposed by the defendant which after hearing was allowed and the defendant was directed to maintain status quo till the disposal of suit as per order dated 6th May 2010. The petitioner filed a Miscellaneous Appeal No. 15 of 2010 against the said order before the District Judge which after hearing was dismissed. The contention of learned counsel for the petitioners is that an area sixty decimal was acquired by the State of Bihar from the ancestor of respondents under the provision of Land Acquisition Act. The Government of Bihar constructed road over some of the portion of said land and settled three decimals land in favour of these petitioners in the year 1995. On the basis of said settlement, the petitioners claim to have constructed tiled roof house. The respondents have admitted the possession of petitioners and they have sought relief for recovery of possession after adjudication of their title. The original settlee, who was defendant before the court below, died and his heirs were substituted and they are petitioners before this Court. They want to make necessary repairs in the house in order to make it habitable.

4. The learned counsel for the respondents on the other hand submitted that the defendants are trespasser and so the court below considering the title of plaintiffs, has rightly directed the



defendants to maintain status quo.

5. On perusal of the impugned order and documents on record it appears that the respondents-plaintiffs have filed the present suit for adjudication of their title on the basis of registered deed of gift. Petitioners on the other hand claim the suit property by virtue of settlement from the State of Bihar taken in the year 1994-95. The report of Advocate Commissioner is annexed as Annexure-6 to this writ application which shows that the Advocate Commissioner has found a house containing four tiled roof rooms over the suit premises which were in delapidated condition. The respondents-plaintiffs admit the possession of petitioners, but their main contention is that petitioners in garb of repairing, want to make permanent structure over the suit land which would complicate the matter and so they cannot be allowed to make any construction over the said land.

6. Be that as it may, it is not in dispute that these petitioners are in possession of the house standing over the said land. The said house is made of tiles roof. In course of argument, the learned counsel submitted that the petitioners want to repair only the roof by changing tiles or covering the roof which would be purely temporary in nature at their own cost. If it is so, it would not cause any prejudice to the plaintiffs. The plaintiffs-respondents in the event



of their success in the suit, would get delivery of possession over the same. The petitioners have undertaken not to claim any compensation in the event of success of plaintiffs in the suit.

7. In view of above facts, the impugned order directing the petitioners to maintain status quo is set aside. The petitioners if repair the house, it would be on their risk for which they can't claim any compensation and further that it will be always open for the respondents to claim damages in the event of any loss suffered by them on account of repairing of house. It is however made clear that the above observation has been made only for the purpose of interim order and it should not influence the court below in deciding the suit.

8. This application is accordingly allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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