

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2609 of 2015

In

MA 256 of 2004

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1. Dipak Kumar Mishra @ Deepak Kumar Mishra, Son of Late Fanindra Nath Mishra.

2. Prakash Chandra Mishra, Son of Deepak Kumar Mishra

Both Residents of Mohalla- Congress Maidan Road, P.S. Kadam Kuan, Town & District of Patna.

.... Petitioner/s

Versus

1. Smt. Sobha Jain Wife of Gyanchand Jain

2. Gyanchand Jain, Son of Late Uttamchand Jain, Both Residents of Mohalla- Congress Maidan Road (M/s Bhavishya General Store), P.S. Kadam Kuan, Town & District of Patna-800003.

.....Defendants 2nd Party/Respondents 2nd Party

3. Vijay Kumar Mishra Son of Late Fanindra Nath Mishra.

4. Aaditya Roshan, Minor Son of Vijay Kumar Mishra, at then guardianship of his father and Natural Guardian Vijay Kumar Mishra. Both 3 & 4 are Resident of Mohalla- Congress Maidan Road, P.S. Kadamkuan, Town & District- Patna.

5. Smt. Kiran Mishra, Wife of Sri Bimal Kumar Mishra Resident of R/o Saraswati Niwas, Road No.6C, Rajendra Nagar, P.S. Kadamkuan, Patna-16.

6(A) Ajit Singh (husband of Late Usha Devi)

6(B) Shrikant Singh

6(C) Ravikant Singh

Both Sons of Ajit Singh and Late Usha Devi and all Resident of Hitesh Palere, Mohalla- Jeri Patka, Nari Ring Raod, P.O.+P.S.- Jeri Patka, Town & District- Maharashtra.

7. Smt Neelam Devi Wife of Sri Shashi Bhushan Mishra, Resident of Near Registry Office, Main Road, Narkatiyaganj, District- West Champaran.

8. Smt. Sunita Pandey, Wife of Late Bishwajit Pandey, Resident of Rental Flat No.198, Housing Colony, P.S.- Kankarbagh, Patna-20.

Defendants 1st Set Respondents....Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Brajesh Kumar, Adv.

For the O.P. Nos.1&2 : Mr. Alok Kumar Agrawal, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

5 16-08-2018

Heard learned counsel for the petitioners and learned

counsel representing the opposite parties.

It appears that the petitioners are alleging willful



violation and disobedience of the order dated 11.08.2004 passed by this Court sitting in its Miscellaneous Jurisdiction in M.A. No.256 of 2004. On the said date, this Court had passed an ad interim order directing that “ the parties are hereby prohibited any an ad interim order of injunction from alienating and/or disposing of and/or in any way encumbering or changing the nature and character of the suit property until further orders of this Court. .. .”

The interim order is said to have been reiterated while disposing of the Miscellaneous Appeal on 27th January, 2012. Even though this Court was not inclined to interfere with the order under appeal or expressed its any opinion on the merits of the matter, while directing the learned trial court to dispose of the suit within a period of six months on receipt/production of the certified copy of the order, this Court observed that “Till disposal of the suit, the aforesaid order of this Court as quoted above be maintained by all the parties.”

Learned counsel for the petitioners submits that this interim order has been violated by the opposite parties inasmuch as after the order was passed on 11.08.2004 the opposite parties have either changed the nature of the suit property or have disposed off certain portion of the disputed land. According to him, it is a fit case to proceed under the inherent power of this



Court contained under Article 215 of the Constitution of India. This Court being a Court of law can initiate the contempt proceeding for willful disobedience of its own order.

On the other hand, learned counsel representing the opposite party nos. 1 and 2, who are defendants 2nd party, submits that in fact they were not parties before this Court in M.A. No.256 of 2004 when the order dated 11.08.2004 was passed. The opposite party nos.1 and 2, however, joined the Miscellaneous Appeal as party respondents on 14.07.2009 and thereafter the case of the opposite parties is that they have not violated the order of this Court. Learned counsel submits that the contempt application preferred by the petitioners are based on only vague allegations which cannot be gone into in the present contempt proceeding. It is also submitted that a perusal of the contempt petition itself would show that the petitioners are well aware of the provision of Order XXXIX Rule 2-A of the Code of Civil Procedure and what has been contended before this Court is that this Court should proceed and punish the opposite party nos.1 and 2 invoking the provision of Order XXXIX Rule 2-A of the Code of Civil Procedure.

Having heard learned counsel for the petitioners and upon perusal of the records, this Court finds that the order against



which the contempt has been alleged is an order passed under Order XXXIX Rule 1 and 2. There is no dispute on this. If it is so, then in terms of their own submissions the petitioners were required to proceed in an appropriate proceeding in terms of Order XXXIX Rule 2-A of the Code of Civil Procedure. At this stage, Rule 2-A under Order XXXIX of the Code of Civil Procedure is taken note of as under:-

“[2-A. Consequence of disobedience or breach of injunction.- (1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]”

I am of the considered opinion that on the face of the specific provision available to the petitioners which provides the mode and manner in which a case alleging disobedience of any injunction granted to a party to a suit is to be proceeded with, the petitioners have wrongly invoked the jurisdiction of this Court under Article 215 of the Constitution of India.



This application is not fit to proceed. It is dismissed accordingly, but with a liberty to the petitioners to seek their remedy before the appropriate court in accordance with law.

(Rajeev Ranjan Prasad, J)

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