

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23890 of 2013

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1. Dharma Sheela Devi Wife of Shekhi Lal Singh, resident of village- Bihta Dih
New Tola P.S.- Bihta, District- Patna
 2. Sekhilal Singh Son of Late Ramchappit Singh, resident of village- Bihta Dih
New Tola P.S.- Bihta, District- Patna
 3. Ashok Singh @ Ashok Kumar Singh Son of Shekhilala Singh, resident of
village- Bihta Dih New Tola P.S.- Bihta, District- Patna

.... Petitioner/s

Versus

Smt. Usha Devi W/o Sri Ram Sakal Pandey, resident of village- Bihta, P.S.- Bihta,
District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Kamlesh Kumar Pathak and Arvind Kumar, Advs.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 26-03-2018

The defendant of Title Suit No. 37 of 2010 has filed this writ application for quashing the order dated 27th July 2013 passed by Additional District Judge-IV, Danapur in Miscellaneous Appeal No.65 of 2011.

2. The respondent filed the aforesaid suit on the file of Munsif for declaration that the defendants have no right to make wall over the land situating towards south-west to the house of plaintiff and also to declare that the land as described in Schedule-I of the plaint is part and parcel of the plaintiffs purchased land of survey plot No. 746. The respondent filed an injunction petition before the court of Munsif for injunction against the present petitioners which after hearing was



rejected. Against the said rejection order, the respondent filed Miscellaneous Case No. 65 of 2011 which after hearing was allowed and the petitioners-defendants were directed to maintain status quo till the final adjudication of the suit. The petitioners being aggrieved by the said order, have filed this writ application alleging that the court below has exceeded its jurisdiction in directing the petitioners for maintaining status quo over the land which is purchased land of these petitioners.

3. Heard learned counsel for the petitioners. Nobody appeared for the respondent.

4. It appears that the respondent purchased the land of plot no. 746 from her vendor late Narayan Bhagat. The vendor of the plaintiff had purchased 3 katha 5 dhur land of plot no. 746 in the year 1941 from late Bashdhari Singh and Ambika Singh. These petitioners had their land in plot no. 748 towards west of the land of plaintiff. These petitioners purchased the land of plot no. 747 which situates just west to the land of plaintiff and east of the ancestral land of these petitioners. The plot no. 747 was purchased by virtue of registered sale deed executed by Sheodhyan Singh. The petitioners got possession over the said land to the knowledge of plaintiff and public in general. After purchasing the land, petitioners amalgamated plot no. 747 with their plot no. 748. The petitioner no. 1 and her vendor



constructed boundary wall in two sides of plot no. 747 and western side was amalgamated with plot no. 748. The petitioners land is bounded by 7 feet boundary wall in northern side and 10 feet wall in eastern side of plot no. 747 which was constructed by the vendor of the plaintiff. The respondent or her vendor has not left an inch of land in western edge of plot no. 746. The plaintiff in order to grab the land of these petitioners in plot no. 746 has illegally filed the present suit. The plaintiff has opened two windows and constructed Chhajja over some portion of the land of these petitioners comprised in plot no. 747. The plaintiff has no right or title over any portion of plot no.747 and so the court below had or has no jurisdiction to direct the petitioners to maintain status quo over the land of plot no. 747.

5. On going through the submission of learned counsel for the petitioners and documents on record, I find that the petitioners claim the land of plot no. 747. The respondent, who is plaintiff before the court below, claims her title over the plot no. 746. There is nothing on record to show as to whether the petitioners have encroached any portion of plot no. 746. The petitioners assert that plaintiff or her vendor has not left even a single inch of land of plot no. 746 and now they want to encroach the land of the petitioners. The vendor of these petitioners had erected boundary wall over the land of plot no. 747 and the petitioners purchased the same with boundary



wall. The plaintiff has no right to claim the land which is within the boundary wall of the petitioners. The court below without recording any reasons as regards title of the plaintiff over the land of plot no. 747, has directed the petitioners to maintain status quo. From the material on record it is also not established as to whether the land which is alleged to be disputed is part and parcel of plot nos. 746 and 747. The plaintiff in the event of proving her case is only entitled to injunction against these petitioners and so the court below without finding *prima facie* title of plaintiff over plot no. 747, has directed the petitioners to maintain status quo.

6. In view of above facts, the order directing to maintain status quo over the land without ascertaining as to over which plot the plaintiff has right, is not sustainable and is accordingly set aside. This application is accordingly allowed. The court below is however directed to expedite the trial preferably within a year.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.03.2018
Transmission Date	

