

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.125 of 2019

Md. Aqilur Rahman, S/o Late Md. Khalilur Rahman, Resident of Village-
Sujawalpur, P.O.- Dholi, P.S. and Anchal-Sakra, District- Muzaffarpur

... .. Defendant/Petitioner

Versus

1. Bishwanath Prasad Gupta S/o Late Ram Lakhan Sah
2. Uma Shankar Gupta S/o Late Kedar Nath Gupta
3. Udai Shankar Gupta S/o Late Kedar Nath Gupta
4. Pramod Kumar Gupta S/o Late Siyaram Prasad Gupta
5. Subodh Kumar Gupta S/o Late Siyaram Prasad Gupta
6. Nawal Kishore Gupta S/o Bishwanath Prasad Gupta
7. Raj Kishore Gupta S/o Bishwanath Prasad Gupta

All residents of Village- Majhaulia, P.O.- Chandanpatti, P.S. and Anchal-
Sakra, District- Muzaffarpur

8. Kailash Nathani,
9. Montti Nathani S/o Kailash Nathani

Both residents of Mohalla- Islampur, Bank Road, Chulha Ghar, P.O.- H.P.O.,
P.S.- Town, Muzaffarpur

.... Plaintiff/Respondent 1st Party

10. Ajay Nishad S/o Jai Narain Nishad A/p Mohalla- Attardah, Post- Ramna, P.S.-
Sadar, District- Muzaffarpur
11. Shakilur Rahman S/o Late Khalilur Rahman, Resident of Village-
Shujawalpur, P.O.- Dholi, District- Muzaffarpur
12. Zeenut Parveen, D/o Late Md. Khalilur Rahman, Resident of Mohalla-
Zarekia Colony, P.O.- Ramna, District- Muzaffarpur
13. Ismat Nasreen W/o Badiruzzama, D/o Late Md. Khalilur Rahman, C/o S.
Haddani, Sadpura, Zarakia Colony, P.O.- Ramna, District- Muzaffarpur
14. Nikhat Jabben W/o Md. Junaid Alam, D/o Late Md. Khalilur Rahman
Resident of Village and P.O.- Dariyapur Kafan, District- Muzaffarpur

... .. Plaintiffs/Respondent/s 2nd Party

Appearance :

For the Appellant/s	:	Mr. Arshad Alam, Advocate Mrs. Anjum Perveen, Advocate
For the Respondent/s	:	Mr.



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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-02-2019

Heard Mr. Arshad Alam, learned counsel for the petitioner and perused the record.

2. This application under Article 227 of the Constitution of India has been filed by the Defendant-Petitioner challenging the order dated 21.12.2018 passed by the learned 11th Additional Session Judge, Muzaffarpur in Misc. Appeal No.07 of 2017 whereby the order of status quo granted by the court of Sub-Judge-III, Muzaffarpur in Title Suit No.236 of 2011 was quashed.

3. The petitioner is the plaintiff in Title Suit No.236 of 2011. In the said title suit, an injunction petition was filed by the petitioner to hold and declare the two sale deeds, dated 10.03.1970, one executed by late Khalilur Rahman and the other by late Bibi Saiyada Khatoon, in the name of Kedar Nath Gupta, Bishwanath Prasad Gupta and Siyaram Prasad Gupta as void *ab initio* because they were executed without prior permission from the consolidation authority under the law as also under section 32 of the Bihar Consolidation Act.

4. The purchasers of the suit property mortgaged the property through registered mortgage dated 31.01.1974 to



the Bihar State Financial Corporation and the Bihar State Financial Corporation took over the property on failure of the borrower to pay. Later on, the Bihar State Financial Corporation transferred the suit property to Sri Gurucharan Singh and Ranjit Singh by executing registered deed of transfer dated 14.04.1984 and they are running Ranjit Cold Storage over the suit property.

5. The case of the plaintiff-petitioner is that both the sale deeds executed by his parents namely, Bibi Saiyada Khatoon and Khalilur Rahman dated 10.03.1970 are *ab initio* void because the same were executed without prior permission from the Consolidation Officer.

6. After hearing the parties on the application filed under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure, the learned Sub Judge-III, Muzaffarpur came to the conclusion that neither prima facie case nor balance of convenience lies in favour of the plaintiff-petitioner nor any irreparable loss is caused to him. Thus, he came to the conclusion that the petition for injunction should not be allowed. After reaching to such conclusion, the learned Sub Judge disallowed the prayer for injunction, but ordered for maintaining status quo.

7. The said order was challenged by the



defendant-appellant before the learned Additional Session Judge, Muzaffarpur vide Misc. Appeal No.7 of 2017. The appellate court found the order of the learned Sub-Judge unsustainable as the same amounted to grant of injunction in favour of the plaintiff-petitioner whereas the said prayer was disallowed on consideration of merit.

8. Accordingly, vide impugned order dated 21.12.2018, the appellate court ordered that the order of status quo is not sustainable in the eye of law and it set aside the same and allowed the miscellaneous appeal.

9. Being aggrieved by the aforesaid order dated 21.12.2018, learned counsel appearing for the petitioner submitted that the order impugned passed by the court below whereby the order of status quo granted by the learned Sub Judge has been set aside in a casual and perfunctory manner is bad in law as also on facts. He submitted that the court below has not discussed the grounds taken by the petitioner before the appellate court.

10. Having heard learned counsel for the petitioner and perused the materials on record, I find no error in the order impugned passed by the court below. It is surprising that when the learned Sub Judge himself came to the conclusion



that neither prima facie case nor balance of convenience lies in favour of the plaintiff-petitioner and no irreparable loss is caused to him as to how he could have passed the order of status quo while rejecting the prayer for injunction.

11. If the three pre-requisites for granting an injunction were missing, no order of status quo could have been passed by the trial Judge.

12. Since the order passed by the appellate court is neither without jurisdiction nor any illegality can be found in it, the same does not warrant any interference by this Court.

13. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2019
Transmission Date	NA

