

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.185 of 2019**

1. Hem Chandra Verma, Son of late Kuleshwar Verma.
2. Kumkum Verma, Wife of Sri Hem Chandra Verma,
Both resident of Village Tumiyahi, P.O., P.S. and District- Madhepura.

... .. Petitioners

Versus

1. The State of Bihar, through its Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
2. The Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
3. The Deputy Commissioner, Madhepura.
4. Collector, Land Reforms Collectorate, Madhepura.
5. Circle Officer, Madhepura Circle, Madhepura, P.O., P.S. and District- Madhepura.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Prince Kumar Mishra, Advocate Mr. Jaganath Prasad Yadav, Advocate
For the Respondents	:	Mr. Sajid Salim Khan, SC-25 Ms. Prakritika Sharma, AC to SC-25

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 29-03-2019

Heard learned counsel for the petitioners and
learned counsel for the State

2. This application under Article 227 of the
Constitution of India has been filed by the petitioners for setting
aside the order dated 07.09.2018 passed in Civil Misc. Appeal
No. 09 of 2016 by the learned District Judge, Madhepura,



whereby he has allowed the aforesaid Miscellaneous Appeal No. 09 of 2016 and set aside the order dated 28.09.2016 passed by the learned Sub-Judge-IV, Madhepura.

3. By the aforesaid order dated 28.09.2016, the learned Sub-Judge-IV, Madhepura had granted *status quo* over the land pertaining to C.S. Khata No.131, Plot No.427, Mauza Bhirkhi Uttarbari, P.S. and District Madhepura till final adjudication of the suit in the facts and circumstances of the case.

4. Assailing the aforesaid order dated 07.09.2018 passed in Civil Misc. Appeal No. 09 of 2016, learned counsel appearing for the petitioners submitted that the said order has been passed without taking into consideration several documents issued from the office of the respondent no.5. The court below failed to appreciate the case of the petitioners that if the *status quo* shall not be maintained till disposal of the suit, the petitioners will not only suffer irreparable loss and injury but his legal right will also be prejudiced in the facts and circumstances of this case. He contended that the petitioner no. 2 is a *bona fide* purchaser through registered sale deed dated 22.07.2015 of three katha land pertaining to Khata No. 131, Plot No. 427 of village Bhikhri Uttar Bari and she is entitled to be



protected from the forced eviction from the dwelling house. He has further contended that the order dated 28.09.2016 passed by the trial court was justified in law and for no valid reason the appellate court has interfered with the order passed by the trial court which is not justifiable in law.

5. *Per contra*, learned counsel appearing for the State submitted that there is no illegality in the order impugned passed by the appellate trial court. The trial court had granted the order of *status quo* after recording its finding that the petitioners had no *prima facie* case and no irreparable loss would be caused to them. In that view of the matter, the appellate court has rightly interfered with the order passed by the trial court whereby *status quo* was granted in favour of the petitioners.

6. In reply learned counsel appearing for the petitioners submitted that the trial court had also recorded its finding that the balance of convenience tilts in plaintiff's favour. Thus, there was no illegality in the order passed by the trial court.

7. I have heard learned counsel for the parties and perused the materials on record.

8. The petitioners are the plaintiffs before the



trial court. They filed Title Suit No. 456 of 2015 before the learned Civil Judge, Senior Division, Madhepura with a prayer to declare the entry on the basis of revisional survey, illegal and also to declare their title apart from other reliefs.

9. In the aforesaid title suit they filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Civil Procedure Code (for short 'C.P.C.') praying therein to maintain *status quo* till disposal of the suit.

10. After hearing the parties, the learned Sub-Judge-IV, Madhepura vide order dated 28.09.2016 disposed of the petition filed under Order 39 Rule 1 and 2 read with Section 151 of the C.P.C. with direction to maintain *status quo* over the suit land in question. The operative part of the order reads as under:-

" On the basis of above discussion, I **don't find any prima facie case, the balance of convenience tilts in plaintiffs favour and no irreparable loss would be caused to them in these circumstances, if injunction would not be granted to them.** Yet, it is well settled judicial proposition that ensuring the protection of the suit property is an inherent power of the court and hence both sides are directed to maintain status



quo of the present stage with respect to the suit property till final adjudication of the suit. Accordingly both the petitions dated 03.03.2016 and 17.08.2016 filed by the plaintiffs are hereby disposed of."

(emphasis mine)

11. Being aggrieved by the aforesaid order dated 28.09.2016, the respondent no.5 filed Civil Miscellaneous Appeal No. 09 of 2016 in the court of District Judge, Madhepura. The appellate court has passed the impugned order dated 07.09.2018 whereby it has set aside the order dated 28.09.2016 passed by the trial court.

12. While setting aside the order, it has taken into consideration the fact that for the grant or refusal of a temporary injunction/ *status quo* is covered by three established principles such as (i) whether the petitioner has made out a *prima facie* case; (ii) whether the balance of convenience is in their favour and (iii) whether the petitioners would suffer irreparable injury.

13. It has held that when the court below came to the finding that there is no *prima facie* case and no irreparable loss would be caused to the petitioner, there was no occasion for the trial court to grant order of *status quo* in respect of the property in dispute.



14. True it is that while recording its finding the trial court has recorded that the balance of convenience tilts in plaintiffs' favour, but the same alone would not justify the order impugned.

15. In *Kashi Math Sansthan vs. Shrimad Sudhindra Thirtha Swami [AIR 2010 SC 296]*, the Supreme Court held that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not upon to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

16. In view of the above ratio laid down by the Supreme Court in the case of Kashi Math (supra), no illegality can be found with the order passed by the appellate court whereby the order of *status quo* granted by the trial court vide order dated 28.09.2016 has been set aside.

17. Accordingly, I am not inclined to interfere with the order impugned dated 07.09.2018 passed in Civil Miscellaneous Appeal No. 09 of 2016 by the learned District



Judge, Madhepura.

18. The application is dismissed.

(Ashwani Kumar Singh, J.)

Md. S./R.Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2019
Transmission Date	

