

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.336 of 2019**

1. Vijay Prasad Sharma @ Vijay Prasad Singh and Anr son of Late Naresh Prasad Singh R/o Village-Jamuara, P.S. Tekari, District-Gaya
 2. Satish Kumar Son of Naresh Prasad Singh R/o Magadh Vihar Colony, B.P. Convent School, Prakash Nagar, P.S. Phulwarisharif, District Patna
- Defendants-Petitioners

Versus

Amar Prasad Sharma Son of Late Naresh Prasad Singh R/o Village- Jamuara, P.S. Tekari, District-Gaya

... .. Plaintiff-Respondent

Appearance :

For the Appellant/s	:	Mr. Banwari Sharma, Adv. Mr. Shiv Kumar, Adv. Mr. Sahjanand Sharma, Adv.
For the Respondent/s	:	Mr.

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

Date : 04-07-2019

This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 22.12.2018 passed by the learned Sub-Judge-I, Gaya in Partition Suit No. 661 of 2016 whereby the application filed by the plaintiff-respondent under Order 39 Rule 1 read with Section 151 of the Civil Procedure has been allowed and injunction has been granted over the suit land except khata no.231, plot no. 2074 ad-measuring 1953 sqft.

2. The plaintiff and defendants are members of joint Hindu family. The plaintiff has filed the suit for partition of the property in Schedule-B of the plaint for his 1/3rd share. His case is that Naresh Prasad Singh his father and the father of the



defendants had got some landed property in partition between his five brothers. The said Naresh Prasad Singh was *karta* of the joint family of the plaintiff and defendants till his lifetime and he acquired some properties at Patna and also at Jamuara in his name and in the name of his sons and wife from the joint family fund.

3. The plaintiff came to know that the defendants are trying to sell the property, which is under dispute and if they succeeded in selling some portion of the property, the matter would be complicated. As such, a prayer was made that the defendants be restrained from selling the suit property by issuance of an ad interim injunction against the defendants.

4. The defendants-petitioners contested the application filed by the plaintiff. Their contention is that the plaintiff took charge of the defunct *karta* in the lifetime of his father and was managing agricultural work at village Jamuara, and the defendants were in police service and were posted at different places from time to time. Their case is that the father of the plaintiff and the defendants did not acquire any property at Patna or at village Jamuara as there was no saving from agricultural produce to purchase property. All the properties were purchased by the defendants from the savings made from personal income and after taking loan from the bank or provident fund account. Their further



case is that the house property at Patna has been partitioned between three brothers amicably under agreement dated 16.09.2016 and their names have been mutated over their allotted partition of the house at Patna with the consent of all the three brothers.

5. Having heard the rival submissions made on behalf of the parties, the court below vide impugned order dated 22.12.2018 allowed the application filed by the plaintiff and directed for maintenance of status quo. The court has given its finding that the plaintiff has a prima facie case and balance of convenience also lies in his favour. It has also given its finding that the plaintiff would suffer irreparable injury if the prayer for ad-interim injunction is disallowed.

6. It is well settled principle of law that the relief by way of interlocutory injunction can be granted to mitigate the risk of injustice during the period before the uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. However, before granting ad-interim injunction, the court is also required to determine as to whether the balance of convenience



lies in favour of the plaintiff as also whether the plaintiff has a prima facie case.

7. Since the court below has come to the conclusion that there is a prima facie case in favour of the plaintiff and balance of convenience also lies in his favour and no irreparable injury would be caused to either of the parties if ad-interim injunction is granted, at this stage, in exercise of power of superintendence under Article 227 of the Constitution of India, I am not inclined to interfere with the order impugned as the same is neither without jurisdiction, perverse nor illegal.

8. Accordingly, the application is dismissed.

9. However, before parting I must observe that it has been brought to my notice that in the suit written statement has already been filed on behalf of the defendants. If that is so, the trial court is directed to hold the trial of the suit expeditiously without giving any unnecessary adjournment to either of the parties and dispose of the same.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	09-07-2019
Transmission Date	

