

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.329 of 2019

1. Mithilesh Singh @ Mithilesh Prasad Singh (Male, 70 years) Son of Late Janardan Singh, resident of Village- Lodipur, P.O.- Mau, P.S.- Konch, District- Gaya, the Sebait of Lodipur Thakurbari
2. Sri Radhey Krishna Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
3. Sri Ram Lakshman Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
4. Sri Janki Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
5. Sri Sheo Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
6. Sri Vishnu Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
7. Sri Ganesh Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
8. Sri Durga Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
9. Sri Surya Narayan Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
10. Sri Hanuman Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
11. Sri Nand Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid
12. Sri Kritmukh Jee Deity established at Lodipur Thakurbari, P.S.- Konch, District- Gaya through its Sebait/Trustee, namely, Mithilesh Singh aforesaid

... .. Plaintiffs-Petitioners

Versus

1. Smt. Usha Devi Jain (F) wife of Sri Devendra Kumar Jain Resident of Mohalla- North Church Road, Gandhi Maidan, Gaya, P.S.- Civil Lines, District- Gaya



2. Sri Devendra Kumar Jain (M) Son of Kastur Jain Resident of Mohalla- North Church Road, Gandhi Maidan, Gaya, P.S.- Civil Lnes, District- Gaya
3. Arjun Prasad (M) Son of Late Sahdeo Sao resident of Mohalla- Chandchaura, Khabha Gali, P.S.- Civil Lines, District- Gaya

...Defendants-Respondents 1st Set.

4. Sidhi Singh Son of Badri Singh Resident of Village- Lodipur, P.S.- Tekari, District- Gaya
5. Manki Singh Son of Badri Singh Resident of Village- Lodipur, P.S.- Tekari, District- Gaya
6. Mithilesh Singh Son of Late Janardan Singh Resident of Village- Lodipur, P.S.- Tekari, District- Gaya
7. Kamlesh Singh Son of Late Janardan Singh Resident of Village- Lodipur, P.S.- Tekari, District- Gaya
8. Ram Binai Singh Son of Late Janardan Singh Resident of Village- Lodipur, P.S.- Tekari, District- Gaya

... ..Proforma Defendants- Respondents 2nd Set.

Appearance :

For the Petitioners	:	Mr.Sidhendra Narayan Singh, Advocate
		Mr. Jagannath Prasad, Advocate
For the Respondents	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 16-05-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 12.10.2018 passed by learned Sub-Judge-VII, Gaya in Title Suit No. 168 of 2015 whereby the prayer of the plaintiff-petitioner for extension of period of status quo dated 30.11.2017 has been rejected.



3. Learned counsel for the petitioners submitted that the court below passed the impugned order ignoring the settled principles of law. It failed to appreciate that there was no fault on the part of the petitioners in delay in disposal of the suit rather it was obvious that fault was on the part of contesting respondents. Since the petitioner's application for ad interim injunction was already allowed earlier on conditions given therein, for no fault of the petitioners, the court below should not have ignored to extend the order. He has further contended that the order impugned is erroneous and against the judicial propriety.

4. Having heard learned counsel for the petitioner and perused the record, I find from the order impugned that before the appearance of the defendants, an order dated 30.11.2017 was passed by the trial court on a petition under Order 39 Rule 1 and 2 of the Code of Civil Procedure (for short 'CPC'). By the said order, defendants were restrained from alienating the nature of the suit property or creating any third party interest for a period of six months. It was also directed that during the said period the plaintiffs shall make effort for disposal of the suit. Subsequently, the defendants appeared in the suit. They contested the matter and when the application was filed by the petitioner for extending the period of the order of injunction it was argued on behalf of the



defendants that none of the ingredients necessary for passing an order under Order 39 Rule 1 and 2 of the CPC were available to the petitioner. The trial court considered the submissions made on behalf of the parties and keeping in mind the facts pleaded in the case, it came to the conclusion that neither the petitioner had a prima facie case nor balance of convenience was in his favour nor he would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. Having reached to the aforesaid conclusions, the court below rejected the prayer of the petitioner.

5. The findings recorded by the trial court in its order dated 12.10.2018 are as under :-

“6. Heard both sides. Perused the case record. The plaintiff has filed this suit for permanent injunction over the suit land. As per the case of plaintiff the suit property was dedicated to plaintiff deities under regd. deed of Arpauama dt. 11.06.24 and Kapurwa Devi was mere care taker of the thakurbari, so he was only in possession as permissive possessions, but she executed a deed of will dt. 15.03.2006.

7. Before appearance of the defendants a order dated 30.11.2017 was passed by this Court on a petition u/o 39 rule 1 and 2. After the appearance the defendants have filed their w.s. and show cause to the petition of injunction of the plaintiff. Now after hearing both sides it



appears that plaintiff case is that most. Kapurwa Devi, under who the defendants, are claiming title, was in permissive possession of the suit property. Where as the defendant case is that the said Kapurwa Devi was as absolute owner in possession of the suit property.

8. For any order under 0. 39 rule 1 & 2 it is necessary that prima facie case and balance of convenience must be in favour of petitioners also the petitioner has to show irreparable loss of the relief is not granted.

9. It is settled that where the plea raised by the parties can be decided only on the basis of evidence to be led by them, the parties are not entitled for relief of injunction. In the instant case, there is no specific document which could shows that nature of possession was permissive possession. The plaintiff may have a case which requires adjudication on the basis of evidence. But the plaintiff is not eligible for order under 0. 39 rule 1 & 2 CPC. The plaintiff is well protected by provision u/s 52 TPA in case the suit property is alienated during the pendency of the suit. The plaintiff has no prima facie case for injunction u/o 39 rule 1 and 2 CPC defendant claims possession of the suit property, so the plaintiff has no balance of convenience.

10. The period of 6 month is already passed. No sufficient reason for extension of the order.



Therefore, the prayer for extension of status quo order is rejected.”

6. Let it be noted that grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests:-

- (i) whether the plaintiff has a prima facie case;
- (ii) whether the balance of convenience is in favour of the plaintiff; and
- (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

7. The very object of the interlocutory injunction is to protect the plaintiff against any 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. The relief under the aforesaid is fully equitable in nature.

8. Having regard to the case of the defendants, if the court below has reached to the conclusion that none of the essential ingredients for invoking the power under Order 39 Rule 1 and 2 were available to the petitioner, no illegality can be found



with the order impugned, if the court below has refused to extend the order of status quo after the appearance of the defendants.

9. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.05.2019
Transmission Date	NA

