

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.345 of 2019

1. Upendra Rai, S/o Late Shankar Rai, Resident of Vill.- Turha Patti, P.O.- Kodwa Mathia, Ps.- Chanpatia, Distt.- West Champaran
2. Jhunu Rai, S/o Late Upendra Rai, Resident of Vill.- Turha Patti, P.O.- Kodwa Mathia, P.S.- Chanpatia, Distt.- West Champaran
3. Janak Rai S/o Late Shankar Rai, Resident of Vill.- Turha Patti, P.O.- Kodwa Mathia, P.S.- Chanpatia, Distt.- West Champaran
4. Kalika Rai, S/o Late Shankar Rai, Resident of Vill.- Turha Patti, P.O.- Kodwa Mathia, P.S.- Chanpatia, Distt.- West Champaran
5. Vyas Rai, S/o Ramchandra Rai, Resident of Vill.- Turha Patti, P.O.- Kodwa Mathia, P.S.- Chanpatia, Distt.- West Champaran

... .. Petitioners-Appellants-Plaintiffs
Versus

1. The State of Bihar through the Collector, West Champaran, P.O. and P.S.- Bettiah, West Champaran
2. The Anchal Adhikari, Anchal-Chanpatia, P.O. and P.S.- Bettiah, West Champaran
3. The Sub-Divisional Officer at Bettiah Sadar, P.O. and P.S.- Bettiah Town, West Champaran
4. The Land Reforms Deputy Collector at Bettian Town P.O. and P.S.- Bettiah, West Champaran.

.... Respondents 1st party-Defendants 1st party

5. Rajendra Rai, S/o Late Baldeo Rai, Resident of Vill.- Turha Patti, P.O.- Kodwa Mathia , P.S.- Chanpatia, Distt.- West Champaran
6. Bageshwar Rai S/o Late Vishwanath Rai, Resident of Vill.- Turha Patti, P.O.- Kodwa Mathia , P.S.- Chanpatia, Distt.- West Champaran

... .. Respondents 2nd party-Defendants 2nd party

Appearance :

For the Petitioners : Mr. Shiv Kumar Dwivedi, Advocate

For the Respondents-State: Mr. Akilesh Kumar Sinha, AC to SC-19

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 20-06-2019



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 petitioner for quashing the order dated 20.11.2018 passed by the learned District Judge, West Champaran at Bettiah in Misc. Appeal No.19 of 2018 whereby the appellate court dismissed the appeal and confirmed the order dated 08.08.2018 passed by the learned Munsif, Bettiah in Title Suit No.175 of 2017 whereby the petition filed by the petitioner under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 filed by the petitioners has been dismissed.

3. Learned counsel for the petitioners submitted that both the courts below ought to have considered that from the facts and circumstances of the case the petitioners had good *prima facie* case and balance of convenience in their favour. He has submitted that if the impugned orders are allowed to be sustained, the petitioners may be dispossessed from the suit land, which would cause irreparable loss to them.

4. On the other hand, learned counsel appearing for the State submitted that there is concurrent finding of two courts against the petitioners. The order impugned would show that the courts below have considered the points raised by the petitioners



and after considering the claim and counter claim of the parties with respect to the title and possession of the suit land found no *prima facie* case or balance of convenience in favour of the petitioners.

5. To grant an interlocutory injunction during the pendency of the legal proceedings is a matter of discretion of the court. However, while exercising the discretion, the court is required to apply 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.

6. On perusal of the impugned order, I find that the courts below, on appreciation of evidence have found that the petitioners have neither a *prima facie* case nor balance of convenience is in their favour nor they would suffer an irreparable injury, if their prayer for interlocutory injunction is disallowed.

7. In view of the concurrent findings of fact of two courts, I see no reason to interfere with the order impugned in



exercise of jurisdiction under Article 227 of the Constitution of India.

8. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.06.2019
Transmission Date	NA

