

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.550 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Bhagalpur

Rajendra Prasad Sah Son of Late Anandi Sah, Resident of Village and Post-Jamunia, Police Station-Parwatta (Naugachia) and District-Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The D.I.G., Bhagalpur Range, Bhagalpur
4. The Superintendent of Police, Bhagalpur
5. The Officer-in-charge, Parwatta (Naugachia) Police Station, District-Bhagalpur.
6. Sanjay Yadav Son of Budhan Yadav, Resident of Village and Post-Jamunia, Police Station-Parwatta (Naugachia) and District-Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Manish Kumar, Advocate
For the Respondent/s : Mr.M. Nasrul Huda Khan, SC-1

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 03-04-2019

In the instant application preferred under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for directing the respondent-authorities particularly respondent no. 3 to provide adequate security to the petitioner in construction of his house situated at Mauza-Jamunia, Police Station-Parwatta, Anchal-Nathnagar, District-Bhagalpur bearing Khata No. 389, Khesra No. 1088 measuring an area of 1 katha 8 dhur and further to take action against the private respondent who has forcibly tried to grab the aforesaid land of the



petitioner.

2. The contention of the petitioner is that one Sheikh Nijawat was the recorded raiyat with respect to Plot Nos.1088 and 1089 measuring 9 decimal and 5 decimal respectively of Khata No. 389. Sheikh Nijawat, the recorded raiyat died leaving behind his widow Runa Khatoon and six daughters and one son, namely, Guddar @ Jabbar. The son died leaving behind three sons, namely, (i) Md. Umar (ii) Md. Sanowar and (iii) Md. Daud. He purchased the land from the daughters of Sheikh Nijawat through different sale deeds dated 13.04.2013, 03.07.2013, 27.07.2013, 08.10.2013, 07.11.2013 and 22.01.2014. After purchase of the land, he came in peaceful possession over the land. After he constructed his house partly, one Sanjay Yadav came on the land and started causing obstruction in construction. When he enquired about the reason, it transpired that the said Sanjay Yadav had purchased the *parti* piece of land of Plot No. 1088 from one Md. Jabbar. At no point of time, said Md. Jabbar was recorded as raiyat of Plot Nos. 1088 and 1089. Therefore, he had no right, title and interest over the plot. He contended that the Circle Officer has already demarcated the land in question after measurement of his land and Md. Jabbar. A Title Suit No. 153 of 2013 has also been filed



by the father of the vendee of Sanjay Yadav before the Sub-Judge, Naugachia against him with respect to the same property and same has been dismissed vide order dated 31.07.2014. He submitted that with respect to the said land, a proceeding under Section 144 of the Code of Criminal Procedure (for short 'Cr.P.C.') was also initiated between the parties, which, later on, gave rise to another proceeding under Section 107 of the Cr.P.C.. Similarly, an application under Order 39, Rule 1 and 2 of the Code of Civil Procedure (for short 'C.P.C.') was also filed by the respondent no. 6 which was dismissed by the learned Sub-Judge. The said Sanjay Yadav, thereafter, filed an application under Order 9, Rule 1 of the C.P.C. before the court below, which was contested by the petitioner. Thereafter, respondent no.6, Sanjay Yadav filed Title Suit No. 71 of 2015 seeking relief to declare his title on the property as mentioned in Schedule-A of the plaint which is Khesra No. 1088, Khata No. 389 measuring an area of 4 decimal. In the said suit, the petitioner appeared and filed his written statement stating therein that all the facts stated by the respondent no.6 in the plaint are false. The petitioner again started construction of his house upon the land in question. The respondent no.6 filed an application under Order 39 Rule 1 and 2 of the C.P.C, which



was contested by the petitioner stating therein that he is a *bona fide* purchaser of the land through several sale deeds whereas respondent no.6 is claiming his title through sale deed dated 11.10.2016 which is much later then the sale deed executed in favour of the petitioner. The trial court after hearing the parties dismissed the petition filed by the respondent no.6 under Order 39 Rule 1 and 2 of the C.P.C.

3. Being aggrieved, respondent no.6 filed Miscellaneous Appeal No. 26 of 2016 stating therein that the order passed by the court below was erroneous on facts and in law. The Sessions Judge, after hearing the parties vide order dated 27.03.2017 dismissed the said miscellaneous appeal. The order has not been challenged anywhere. However, whenever he starts constructing his house, respondent no. 6 is creating disturbance and obstruction.

4. In view of the submissions made above, learned counsel for the petitioner submitted that the respondent no.6 be restrained from interfering with the property of the petitioner and adequate security be provided to the petitioner so that he may complete his ongoing construction of his house.

5. Per contra, learned counsel appearing for the State submitted that the writ petition is totally misconceived.



Several disputed question of facts have been raised by the petitioner in the instant writ petition. A suit is already pending between the petitioner and the respondent no.6 in respect of the property over which the petitioner is claiming his right to construct the house. In the said suit both the parties have appeared. The suit relates to right, title and possession over the property in question. During pendency of the suit, the petitioner has filed the instant application seeking reliefs which amount to invoking parallel proceeding. He contended that since the petitioner has invoked the statutory remedy in respect of the property in question, no mandamus is required to be issued by this Court.

6. Having heard learned counsel for the parties and perused the materials on record, I find force in the submissions made by the learned counsel for the State.

7. It is not in dispute that with respect to the property in question a civil litigation is already pending between the petitioner and the respondent no.6 wherein question of right, title and possession is involved. During pendency of the suit, a parallel proceeding under Articles 226 and 227 of the Constitution of India would neither be justified nor be permitted to continue. Furthermore, the nature of the suit would require



leading of evidence. This court in exercise of its extraordinary jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution of India would not adjudicate the dispute after recording evidence.

8. In that view of the matter, I am not inclined to entertain this application. The application is dismissed.

9. However, the petitioner would be at liberty to move before the court concerned for early disposal of the suit.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.04.2019
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