

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15297 of 2008

1. SRI SATYANARAYAN SAHAY Son of late Chaturbhuj Sahay Resident of Village- South Behat Tola-Pathrahi, Pargana- Mokarampur, P.O.Jhanjharpur, P.S. Jhanjharpur, and District- Madhubani, Pin- 847403

2. Sri Rajendra Sahay

3. Sri Anil Sahay sons of late Bindeshwar Sahay All Residents of Village- South Behat Tola-Pathrahi, Pargana- Mokarampur,P.O. Jhanjharpur, and District-Madhubani, PIN- 847403

4.1. Kumud Sinha W/o Sri Arun Kumar Sinha, D/o Lakshmi Devi

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR

2. Sri Ram Chander Rai

3. Sri Bindeshwar Rai

4. Sri Satan Rai All Sons of late Sarjug Rai

5. Sri Ramashish Rai Son of late Jaleshwar Rai

6.1. Smt. Rameshwari Devi Wife of Nageshwar Rai Resident of Village- South Behat Tola- Pathrahi, P.S. Madhepur, P.O. Jhanjharpur, and District-Madhubani.

6.2. Ramanand Rai Son of late Nageshwar Rai Resident of Village- South Behat Tola- Pathrahi, P.S. Madhepur, P.O. Jhanjharpur, and District- Madhubani.

6.3. Shivanand Rai Son of late Nageshwa Rai Resident of Village- South Behat Tola- Pathrahi, P.S. Madhepur, P.O. Jhanjharpur, and District- Madhubani.

6.4. Sajni Devi Daughter of late Nageshwar Rai Resident of Village- South Behat Tola- Pathrahi, P.S. Madhepur, P.O. Jhanjharpur, and District- Madhubani.

6.5. Rajni Devi Daughter of late Nageshwar Rai Resident of Village- South Behat Tola- Pathrahi, P.S. Madhepur, P.O. Jhanjharpur, and District-Madhubani.

6.6. Indu Devi Daughter of late Nageshwar Rai Resident of Village- South Behat Tola- Pathrahi, P.S. Madhepur, P.O. Jhanjharpur, and District- Madhubani.

6.7. Nisha Devi Daughter of late Nageshwar Rai Resident of Village- South Behat Tola- Pathrahi, P.S. Madhepur, P.O. Jhanjharpur, and District-Madhubani.

6.8. Sagri Devi Daughter of late Nageshwar Rai Resident of Village- South Behat Tola- Pathrahi, P.S. Madhepur, P.O. Jhanjharpur, and District-Madhubani.

7. Sri Satyendra Sahay

8. Sri Jitendra Sahay

9. Sri Shivendra Sahay All sons of late Rameshwar Sahay All Residents of Bank Colony, Krishna Bihari Path Gola Road, Via Bailey Road Danapur, P.O. and P.S. Danapur, and District Patna, Pin - 801503

10. Sri Devendra Sahay

11. Pushpa Devi Wife of late Rajeev Sahay @ Ranjan Sahay

1.

12. Sri Amrendra Sahay Son of late Gupteshwar Sahay Resident of Daldali Road, Danapur, P.O. and P.S. Danapur, and District- Patna Pin 801503

13. Dipendra Kumar S/o Sri Raj Narayan Lal

14. Bipin Kumar S/o Sri Raj Narayan Lal



15. Ashok Prasad D/o Sri Raj Narayan Lal Res. No. 13 to 15 R/o Patel Nagar,
Near Lalji Market, Shastri Nagar, Distt. Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jashawir Singh Arora, Sr. Advocate
Mr. Manoj Kumar
For the Respondent/s : Mr. Rakesh Ranjan, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date : 29.08.2019

The present writ petition has been filed for setting aside the order dated 23.05.2008 passed by the Sub-Judge-III, Jhanjharpur in Miscellaneous Case No. 28 of 1993/ 8 of 1993, whereby and whereunder the respondent second set has been permitted to withdraw the said miscellaneous case.

The brief facts of the case are that a Partition Suit bearing No. 258/403 of 1970/1973 was filed by the petitioner no. 1 herein before the learned Court of Subordinate Judge, Darbhanga, which was later on transferred to Madhubani and a final decree was passed on 20.01.1984. Thereafter, an execution case bearing Execution Case No. 9 of 1986 was filed for the purposes of executing the said final decree and the delivery of possession was given to the petitioners on 20.07.1993. It is the case of the petitioners that after the aforesaid partition and delivery of possession given to the petitioners by the Court in Execution Case No. 9 of 1986, the petitioners have been continuing in peaceful possession of the land in question as



exclusive owners thereof. After delivery of possession having been effected, the respondents second set filed Miscellaneous Case under Order 21 Rule 100 of the Code of Civil Procedure, 1908 which was numbered as 28 of 1993/8 of 1993, claiming title on the aforesaid land in question.

It is the contention of the petitioner that the respondents second set are strangers. The petitioners had filed rejoinder to the said miscellaneous case, filed by the respondents second set. The petitioners herein had then filed a petition for injunction in the said miscellaneous case since the respondents second set had tried to forcefully dispossess the petitioner. Thereafter, an order dated 25.11.2004 was passed by the learned Sub-Judge-II, Jhanjharpur in the said Miscellaneous Case No. 28 of 1993/8 of 1993, allowing the petition filed by the petitioners herein dated 23.12.2002 under Order 39 Rule 1 & 2 C.P.C. to a limited extent by directing the respondents second set and his purchasers to maintain status quo of the disputed land which is subject matter of the said miscellaneous case. Thereafter, the respondents second set filed a petition dated 21.02.2008 for withdrawing the said Miscellaneous Case No. 28 of 1993/8 of 1993 stating therein that since they have again come into possession of the land in question and are staying



there, they do not want to pursue the said miscellaneous case. The learned court of Subordinate Judge-III, Jhanjharpur had then, by the impugned order dated 23.05.2008, dismissed the said miscellaneous case as withdrawn.

The learned senior counsel, appearing for the petitioners has contended that it was not open for the learned trial court to dismiss the miscellaneous case as withdrawn, on the prayer of the respondents second set, especially after a detailed injunction order had been passed by the said court on 25.11.2004. The learned senior counsel for the petitioner has relied upon a judgment reported in ***A.I.R. 1990 Patna 1 (Indrawati Devi vs. Balu Ghosh)***, paragraph nos. 12 and 13 whereof are reproduced herein below:-

“12. I have, therefore, come to the conclusion that in the exercise of its inherent powers, the Court can in exceptional circumstances not covered by the situations envisaged under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure grant temporary injunction, which includes not only a prohibitory but also a mandatory injunction. I have also come to the conclusion on that in the exercise of its inherent powers, no distinction can be drawn on the ground that such an order is passed at the instance of the plaintiff or the defendant since the justification for the exercise of such power is the existence of exceptional circumstances and in the interest of justice. Consequently the inherent power of the Court can be exercised in favour of either of the parties. Needless to say that the exercise of inherent powers must be in



exceptional circumstances and not contrary to any provisions of law.

13. The only question that remains for consideration is as to whether the circumstances that existed in the instant case were of such an exceptional nature that the Court found itself compelled to pass an order of mandatory injunction. It is not contended on behalf of the petitioner that in the circumstances it was open to the concerned opposite parties to make an application for grant of temporary injunction under Order 39 of the Code of Civil Procedure. Indeed it was argued on behalf of the petitioner that the only relief that they could seek in such a situation was by filing a suit under Section 6 of the Specific Relief Act. It was urged that the trial Court in the circumstances of the case could grant no relief whatsoever to the concerned opposite parties. It is, therefore, not disputed before me that the situation which arose in the instant case was not one which was covered by the situations envisaged in Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure. The Court was faced with a peculiar situation where taking advantage of the Courts remaining closed during Puja Vacation, the petitioner through her husband, a retired D.S.P. and other relatives and musclemen forcibly evicted the concerned opposite parties who were tenants in the suit premises, even while the suit was pending before a Court of competent jurisdiction. The game was to create a situation in which the tenants were faced with fait accompli. This was sought to be achieved by complete disregard of all non-legal or moral. Having achieved the objective, the petitioner wanted the Court to grant her permission to withdraw the suit. By making such an application and asking for the Court's permission the petitioner was doing nothing short of scorning at the legal



procedures and informing the Court how helpless it was when it dealt with shrewd and cunning litigants who wielded considerable influence and muscle power. In such a situation, was the Court expected to remain a mere idle spectator even when it found that a party to the suit had acted in a grossly illegal and highhanded manner in relation to the subject-matter of the suit pending before it? The answer must be in a firm negative. If the dignity and prestige of the Court and the majesty of the rule of law is to be upheld, the Court must stretch its long arms to deal with any litigant who attempts to play with the procedures of the Court and shows scant regard for the rule of law. The inherent powers of the Court are meant to be exercised in such situations because nothing is more demoralising to a law abiding citizen than to be told by the Court that it is helpless in the matter of affording him any protection even when his adversary has acted with impunity contrary to all known legal procedures and that too after submitting to the Court's jurisdiction. To tolerate such an injustice would itself amount to perpetrating injustice in its most blatant form. I am therefore of the considered view that the Addl. Munsif did what he ought to have done in the circumstance of the case, and no litigant who has no regard for the dignity of the Court and the majesty of law can claim the protection of the same Court and the same legal procedure for which he has no regard. I, therefore, find no illegality in the exercise of jurisdiction by the trial Court. The trial Court exercised its inherent powers in a situation which justified the exercise of such power. The trial Court was also right in insisting that before the petitioner could be permitted to withdraw his suit, he must first comply with the mandatory injunction issued against him and not take advantage of his own illegal acts. It was



therefore justified in refusing permission to the petitioner to withdraw the suit and compel him to comply with the order of mandatory injunction.”

The learned senior counsel for the petitioner next relied upon a judgment reported in ***A.I.R. 1956 Patna 455 (The State of Bihar vs. Usha Devi & Anr.)***, paragraph nos. 4 and 5 whereof are reproduced herein below:-

*“4. Mr. Bose, appearing for the opposite party, has in support of the order relied on this principle and drew my attention by way of analogy to the decisions given in *Aygammal v. Thangavelu Padayachi*, 1950 Mad 317 (AIR V 37) (A) and *Mahraj Bahadur Singh v. A. H. Forbes*, 1922 Pat 382 (AIR V 9) (B). These cases, in my opinion, clearly lay down that in circumstances like these, the court has got inherent jurisdiction to do what has been done in this case by the learned Munsif on the facts found by him. That being so, it cannot be said that the order under revision passed by the learned Munsif is one without jurisdiction. In that view of the matter the contention raised by Mr. Shahi fails.*

5. For the reasons stated above, I think that it is not a fit case in which I, sitting in revision, should interfere with the order. The application, is, therefore, dismissed but, in the circumstances of his case, there will be no order as to costs.”

Lastly, the learned senior counsel for the petitioner has relied upon a judgment reported in ***2019 (3) B.L.J. 88 (SC) (Hammad Ahmed vs. Abdul Majeed & Ors.)***, paragraph no. 57 whereof is reproduced herein below:-

“57. The ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties



so as not to frustrate their rights regarding mandatory injunction. In *Deoraj vs. State of Maharashtra and Others*¹⁸, this Court held that Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Therefore, in appropriate case, ad-interim injunction in mandatory form can be granted. The Court held as under:-

"12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case - of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being 18 (2004) 4 SCC 697 37 perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent."

I have heard the learned senior counsel for the petitioner as also the learned counsel for the State, however,



despite due service of notice upon the respondents and Vakalatnama having been filed on their behalf, none have appeared on behalf of the private respondents.

The only question to be decided in the present case is as to whether it was permissible for the respondents second set herein to withdraw the aforesaid miscellaneous case in case they had derived any benefit, if at all, by an injunction order passed by the learned court below on 25.11.2004. At this juncture, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court, reported in **(2008) 17 SCC 73 (Abhimanyoo Ram vs. State of Uttar Pradesh & Anr.)**, paragraph nos. 6 and 8 whereof are reproduced herein below:-

“6. Any attempt by a litigant to retain the benefit of the interim order by avoiding final adjudication, requires to be deprecated. In fact, it requires to be dealt with sternly. Courts should bestow caution while dismissing cases where interim relief had been granted, as not pressed or as withdrawn. The courts cannot proceed on the assumption that all concerned would know about the legal consequences of dismissal and therefore, it is not necessary to make any order in regard to the interim relief already granted. Even though the legal effect of dismissal on withdrawal, is vacation of the interim order, the concerned respondents not being aware of the legal consequences, will not take



consequential action but continue the benefit extended to the petitioner by the interim order, unless there is a specific direction spelling out the consequences. Sometimes, the concerned departmental officials, on account of collusion with the petitioners who had obtained the interim relief, will not withdraw or reverse the benefit granted to the petitioner in pursuance of the interim order, when the petition is withdrawn or dismissed as not pressed. Therefore, appropriate consequential directions cancelling or vacating the interim order should be passed so as to restore status quo ante. In cases where the prayer for dismissal (as not pressed or withdrawn) is made even before the respondent is served, then the order vacating the interim order should be communicated to the authority against whom the interim order was issued, so that any benefit extended as a consequence of the interim order, can be withdrawn or reversed. The only exception is where the respondents agree for the continuance of the interim order as a final relief, or agree that the benefit of the interim order already granted need not be disturbed, in which event, the court should record such submission and pass appropriate consequential orders.

8. In this case, the appellant was not put on notice about the consequential direction to be issued on acceptance of the request for withdrawal, nor given the option of continuing with the case, if he did not want dismissal of his petition with any added directions. To that extent it can be said that there has been



violation of a facet of principles of natural justice.”

Now, coming back to the present case and considering the effect of the interim injunction granted by the learned Subordinate Judge-II, Jhanjharpur vide order dated 25.11.2004, it is apparent that the respondents second set herein were directed to maintain status quo of the disputed land which is the subject matter of the said miscellaneous case, upon submission made by the learned counsel appearing for the respondents second set in the said miscellaneous case to the effect that his client i.e. the miscellaneous petitioners were neither inclined to take forcible possession of the disputed land nor liable to change the physical feature of the land in question. It is the case of the petitioners herein that despite the injunction order having been passed in their favour on 25.11.2004, the respondents second set had constructed hutments over the disputed land in question and had also dispossessed the petitioners herein despite the said injunction order being in force. In this regard, it would be relevant to reproduce relevant portion of the petition filed on behalf of the petitioners herein against the petition filed by the miscellaneous petitioners i.e. the respondents second set herein dated 21.02.2008 for withdrawal of the miscellaneous case filed by them herein below:-



“3...Thereafter the applicants dishonestly to grab the lands filed this Misc. Case on the basis of forged & fabricated unregistered memorandum of sale and sale deed with prayer for recovery of possession and the applicants during the pendency of this case illegally executed sale deeds to different persons and as such the OP filed injunction petition and also to implead the purchasers and on 25-11-2004 the learned court directed the applicants and their purchasers to maintain status quo over the disputed land but in spite of the said restrained order the applicants dishonestly erected four hutments over the suit lands in the absence of the Ops in the first week of January/2008 and dispossessed the OP decree holders without permission of the court and having no regard for orders of the court and the applicants also defrauded the court and fraudulently filed this withdrawal petition admitting that they have taken possession over the suit lands.

- 4. That the applicants never got rights, title, interest & possession over the suit lands.*
- 5. That the applicants have no right to take possession of the land in question without adjudication of the matter and without the orders of court and the applicants have no right to take possession over the lands in question over which the OP decree holders were put in possession through the process of court.*
- 6. That it is essential in the interest of justice that the decree holders be put on possession and the*



applicants be directed to deliver the possession to the OPs over the lands in question.

It is, therefore, prayed that your honour be pleased to reject the petition for withdrawal filed by the applicants.

And for this the OP shall ever pray.”

This Court finds that the petitioners herein had pleaded before the learned trial court that though the respondents second set herein had been directed to maintain status quo over the disputed land, however, they had not only constructed hutments over the disputed land but had also forcibly dispossessed the petitioners herein from the land in question. In fact a bare perusal of the petition filed for withdrawal of the suit dated 21.02.2008 also shows that the miscellaneous petitioners have admitted that after sometime they have been able to gain possession over the land in question and have made their house whereafter they along with their children are living there. In the said petition dated 21.02.2008, it has also been admitted that since the miscellaneous petitioners are in possession of the disputed land, which is subject matter of said miscellaneous case, and have also sold some portion of the said land, they do not want to continue with the miscellaneous case.

Thus, this Court finds that admittedly despite passing of the interim injunction order dated 25.11.2004, in favour of



the petitioners herein, the respondents second set had circumspectly chosen to withdraw the said miscellaneous case, after violating the interim injunction granted by the learned trial court vide order dated 25.11.2004, in favour of the petitioners herein. In fact the law in this regard is very clear, as has been propounded not only by this Court but also by the Hon'ble Apex Court in the judgment referred to herein above in the preceding paragraphs. It is clear that the respondents second set have acted with impunity, contrary to all known legal procedures and that too after submitting to the jurisdiction of the learned court below by not only filing the said miscellaneous case but also by undertaking before the learned trial court that they would not either take forcible possession of the disputed land or change its physical feature. Hence, it was incumbent upon the learned trial court to first ascertain as to whether the interim injunction granted vide order dated 25.11.2004, in favour of the petitioners herein, has been violated or not, in view of the specific complaint made by the petitioners herein before the learned trial court by filing rejoinder dated 27.02.2008, to the petition of withdrawal dated 21.02.2008, regarding infringement of the injunction order dated 25.11.2004 passed by the learned trial court, by the miscellaneous petitioners and only in case the



finding was in the negative, the learned trial court should have permitted withdrawal of the said miscellaneous case. In any view of the matter, it was also required on the part of the learned trial court to ensure compliance of the order of injunction dated 25.11.2004 passed by it in favour of the petitioners herein, before permitting the Miscellaneous Case petitioners to withdraw the said miscellaneous case. Moreover, this Court finds that the impugned order dated 23.05.2008, passed by the Subordinate Judge-III, Jhanjharpur in Miscellaneous Case No. 28 of 1993/8 of 1993, is absolutely a non-speaking and an unreasoned order which has not at all taken into consideration the objections raised by the petitioners herein, hence on this ground alone the same is fit to be set aside.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the present writ petition stands allowed and the order dated 23.05.2018 passed in Miscellaneous Case No. 28 of 1993/ 8 of 1993 by the Sub-Judge-III, Jhanjharpur, stands quashed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	16.08.2019
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