

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.100 of 2018

Mahendra Singh Son of late Bideshwari Singh Resident of Village- Punaon,
P.S. Belaon, District- Kaimur at Bhabua.

... .. Petitioner

Versus

1. The State Of Bihar
2. Anchaladhikari, Rampur, District- Kaimur.
3. Radheyshyam Sharma
4. Achhey Sharma Son of late Baiju Lohar Resident of Village- Punaon, P.S.
Belaon, District- Kaimur at Bhabua.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. K. N. Choubey, Sr. Adv. Mr. J.K. Pandey, Adv.
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 05-09-2019

Heard Mr. K. N. Choubey, learned senior advocate
for the petitioner. No one appears for the respondent State of
Bihar.

2. This application under Article 227 of the Constitution
of India has been filed by the petitioner for quashing the order
dated 18.12.2017 passed by the learned District Judge, Kaimur at
Bhabua in Civil Misc. Appeal No. 11 of 2016 by which the order
dated 19.02.2017 passed by the learned Sub-Judge IV, Bhabua in
Title Suit No. 275 of 2008 whereby a petition under Order 39,
Rule 1 and Section 151 of the Code of Civil Procedure (for short



‘CPC’) was rejected has been upheld and the appeal has been rejected.

3. Mr. K. N. Choubey, learned senior advocate appearing for the petitioner submitted that the appellate court did not appreciate the case of the petitioner and erroneously dismissed the appeal while upholding the order passed by the learned Sub-Judge on the application filed by the petitioner under Order 39, Rule 1 and Section 151 of the CPC. He contended that the house was constructed by the petitioner’s ancestors in the year 1932 and since then they were living therein. They paid rent to the ex-landlord and after abolition of Zamindari, paid rent to the State till preparation of revisional survey in the year 1970. According to him, merely because in the revisional survey the land in question was recorded in the name ‘*Anabad Bihar Sarkar*’ and its entry was shown as ‘*Purani Parti*’, the appellate court dismissed the appeal without appreciating that the petitioner has prima facie case and balance of convenience is also in his favour.

4. Having heard learned senior advocate for the petitioner and perused the materials on record, I find that the dispute in Title Suit No. 275 of 2008 relates to 0.08 acres of land out of 8 pai C.S. Khata No. 34 Plot No.272 corresponding to R.S.



Khata No. 84 Plot No. 446 under Mauza Punaon, Thana No. 813, Tauzi No. 1975, P.S. Belaon, District- Kaimur at Bhabua.

5. The case of the petitioner is that the disputed land belonged to ex-landlord Most. Bibi Wahidul Nisa. One Shiv Lohar was working in the domain of the said landlord. The ex-landlord being pleased with the services of Shiv Lohar orally settled the disputed land in his favour prior to preparation of cadestral survey. Accordingly, Shiv Lohar constructed house and started living therein. After cadestral survey was prepared, erroneously R.S.Plot No. 446 ad-measuring 8 decimals was recorded in the name of '*Anabad Bihar Sarkar*' and its entry was shown as '*Purani Parti*'. His further case is that one Sajjad Hussain, one of the shareholders of ex-landlord Most. Bibi Wahidul Nisa, executed sale deed dated 11.09.1944 in favour of Rampati Singh, Ramnaresh Singh and Dudhnath Singh, the ancestors of the petitioner for 1 acre 14 decimals of land which included the disputed land and Jamabandi was created and Register D was prepared in the names of vendee aforesaid. At the time of Zamindari abolition, return was filed in favour of the petitioner's ancestors. His further case is that prior to Zamindari abolition, the petitioner's family paid rent to the ex-landlord and after that the State of Bihar till 1970.



6. Learned senior advocate appearing of the petitioner submitted that in the background of the facts noted above, the court below ought to have allowed the application dated 16.09.2015 filed by the petitioner under Order 39, Rule 1 of the CPC. It ought to have appreciated that if he will be dispossessed, he will suffer irreparable loss, which cannot be compensated in terms of money.

7. Though no one has appeared on behalf of the State, a counter affidavit filed on behalf of the respondent nos.1 and 2 is on record. In the counter affidavit, it is categorically stated that the land in question is in the nature of '*Purani Parti*' and has been recorded as '*Anabad Bihar Sarkar*'. In C.S. Khatyan also the same has been recorded as C.S. Khata no. 34, plot no.272 having an area 0.08 acres.

8. It is further contended in the counter affidavit that the petition is hopelessly time barred as the plaintiff has filed the title suit in the year 2008, i.e., after lapse of 38 years of final publication of Provisions-1 survey operation. The revisional, survey operation was started in the year 1962-63 in the village in the knowledge of the plaintiff's ancestors and the villagers, but the ancestors of the petitioner did not take any steps in respect of the land in dispute. Similarly, after final publication of the revisional



survey khatian, no steps were taken by the petitioner for correction of the finally published revisional survey khatian in spite of the fact that there was provision under Section 106 of the Bihar Tenancy Act for the said purpose.

9. The trial court has taken into consideration the pleadings of the plaintiff as also the fact that though the suit was filed in the year 2008, after lapse of about seven years, an application under Order 39, Rule 1 and Section 151 of the CPC was filed with a prayer to restrain the defendants 1st set not to disturb or obstruct peaceful title and possession. On appreciation of materials on record, the trial court gave categorical finding that there is neither any prima facie case nor any balance of convenience in favour of the petitioner. It also gave a finding that there would be no irreparable loss to the petitioner in case the defendants would not be restrained.

10. After hearing the parties and appreciating the materials on record, the appellate court fully concurred with the opinion expressed by the trial court.

11. In view of the concurrent findings of fact by the two courts, I see no reason to interfere with the order impugned in supervisory jurisdiction under Article 227 of the Constitution of



India as the same does not suffer from any illegality or perversity or want of jurisdiction.

12. The application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12-09-2019
Transmission Date	

