

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.613 of 2018

Murari Lal Lakkar son of Late Radheshyam Lakkar, resident of Mohalla - Main Road, Ward No. 10, Nagar Parishad, P.O. and P.S.Sitamarhi, Anchal - Dumra, District and Town - Sitamarhi.

... .. Appellant/s

Versus

1. Dev Narayan Kherwar, son of Babuji Khairwar, resident of Mauza, Post Circle - Vasantpur, P.S. and Sub-Division Birpur, District Supaul.

Defendant 1st set / respondent no.1st set

2. Nagendra Marik
3. Surender Marik
4. Jainendra Marik,

all sons of late Vishwanath Marik Resident of Village - Koriyapatti, Post - Hulhas, P.S. - Raghobpur, District – Supaul.

Defendant 2nd set / respondent 2nd set

5. Lakshmi Narayan Khairwar
6. Tej Narayan Khairwar,
Both sons of late Adhik Lal Khairwar
7. Prabha Devi, wife of late Satya Narayan Kherewar
8. Mausam Kumar Kherewar, son of late Satya Narayan Kherewar
9. Laddoo Kherewar, son of late Satya Narayan Kherewar
10. Bobi Kumari
11. Soni Kumari
12. Gudiya Devi

All daughters of late Satya Narayan Kherewar, Residents of Mauza, Post, Circle - Basantpur, P.S. and Sub-Division - Birpur, District – Supaul.

Defendant 3rd set / respondents 3rd set

13. Bameshwar Prasad Sinha, son of Lalita Prasad Sinha
14. Saraswati Devi, wife of Umanandan Singh,
Both residents of Mauza - Ward No. 03, Nagar Panchayat - Birpur, P.S. P.O. Sub- Division - Birpur, District - Supaul.
15. Sarva Narayan Thakur, son of late Mahaveer Thakur,
residents of Mauza - Ward No. 04, Nagar Panchayat - Birpur, P.S. P.O. Sub-



Division - Birpur, District – Supaul.

Defendant 4th set / respondent 4th set

16. Abhishek Kumar Pandey
17. Saurabh Kumar Pandey,
Both sons of late Prasann Kumar Pandey
18. Pinki Kumari, daughter of late Prasann Kumar Pandey, wife of Rajeev Kumar Pandey, All residents of Mauza - Ward No. 05, Nagar Panchayat - Birpur, P.S. P.O. Sub-Division - Birpur, District – Supaul.

Defendants 5th set / respondents 5th set

19. Janki Devi Lakkar wife of Late Radheshyam Lakkar
20. Usha Devi daughter of Late Radheyshyam Lakkar
21. Shobha Devi daughter of Late Radheyshyam Lakkar
22. Anita Devi Karsera daughter of Late Radheyshyam Lakkar
23. Madhu Devi daughter of Late Radheyshyam Lakkar
24. Sangeeta Khemka, daughter of Late Radheyshyam Lakkar
All residents of Mohalla - Main Road, Ward No. 10, Nagar Parishad, P.O. and P.S. Sitamarhi, Anchal - Dumra, District and Town - Sitamarhi.

Performa defendants / Respondent/s

Appearance :

For the Appellant/s	:	Mr. S. D. Sanjay, Sr. Advocate M/s Priya Gupta, Advocate Mohit Agarwal, Advocate
For the Respondent/s	:	Mr. Rajesh Ranjan, Advocate Mr. Archit Rajpal, Advocates

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 08-07-2019

Heard parties.

2. This miscellaneous appeal has been filed for setting aside the order dated 16.04.2018 passed in title suit no. 12 B /15 in which the application filed on behalf of plaintiff under Order 39 Rules 1, 2 of CPC for grant of temporary injunction has been refused.

3. Plaintiff has filed present title suit for declaration



of title over Schedule-1 land which was purchased by him by two registered sale deeds on 27.11.1968 from Babuji Khairwar measuring 1 Acre 58 Decimals. It has been further submitted that he had constructed one room for business purpose in which he used to manufacture wire-net, however, subsequently he shifted in his native place and taking advantage of his absence, defendant no. 1 executed a sale deed in favour of Bameshwar Prasad Sinha measuring 12 decimals and other sale deed in favour Sarvnarayan Thakur measuring 5 Decimals and another sale deed in favour of Saraswati Devi measuring 10.4 Decimals who are defendant 4th set, which has been detailed in Schedule-2 of the plaint.

4. It has been further stated that Babuji Khairwar executed a sale deed dated 23.12.2000 in favour of Prasann Kumar Pandey defendant 5th set, measuring 12 decimals of land which has been detailed in Schedule-II (Ka) of the plaint.

5. It has been further stated that left over land are detailed in Schedule-3 of the plaint.

6. It has been submitted by the learned counsel for the appellant that in the revisional survey, the disputed lands were recorded in the name of khatadhari Babuji Khairwar. Two sale deeds dated 27.11.1968 were executed by Babuji Khairwar



in favour of plaintiff and he was given possession of his purchased land. In January 2015, defendants dispossessed plaintiff and constructed their house on schedule II and II Ka, as such the plaintiff had filed the suit for deceleration of right, title and possession over schedule 3 land and for declaration of right, title and recovery of possession of schedule II and II (Ka) of suit land.

7. Plaintiff filed an application for grant of temporary injunction to restrain defendants from dispossessing plaintiff from schedule III land and also restrain them for alienating the remaining suit land or changing its physical feature.

8. Show cause filed on behalf of defendants stating therein that injunction petition was filed on 24.11.2015 but pressed on 24.11.2017 as such no urgency was shown by the plaintiff. Both sale deeds on which plaintiff is claiming title over suit land is forged and he never came in possession over the suit land on basis of said sale deeds. Defendant no.1 and defendant no.3 are coming in possession over the suit land and after purchase, the purchasers are in possession over the suit land. It has been further admitted that in the revisional survey name of Babuji Khairwar is recorded in khata of suit land but both



brothers had share in the suit land as Babuji Khairwar was the eldest and manager of the family as such khata of suit land was recorded in his name. Babuji Khairwar had not sold any land to the plaintiff but has sold land to Prasann Kumar Pandey from his share. Suit land belongs to defendant and they are in possession over the suit lands. They are paying rent of suit land to Government of Bihar and holding is in their name. Plaintiff has only copies of sale deed and not the original sale deed as such, no *prima facie* case is made out for grant of injunction.

9. The trial court has observed that plaintiff has filed this suit for right and title over the suit land and also for recovery of possession of suit land as detailed in schedule II and schedule II ka of plaint. Plaintiff has raised only apprehension that defendants are going to sell the suit land to different persons during pendency of suit but any such transaction is hit by lis pendens. The trial court has found *prima facie* case to be in favour of plaintiff still has rejected the injunction petition filed on behalf of plaintiff.

10. Without interfering in the order passed by the trial court, the order dated 16.04.2018 is modified to the extent that any party in the suit, in case of necessity or urgency, may approach the trial court to obtain its permission for any



alienation or making any change in the nature of suit land.

11. The trial court is directed to decide the suit within one year from the date of receipt/production of copy of order passed by this Court.

12. Miscellaneous appeal is disposed of.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2019
Transmission Date	NA

