

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1543 of 2019**

1. Ramashish Singh Son of Late Ram Lagan Singh, Resident of village- Telkup P.S. Rohtas, District- Rohtas at Sasaram.
2. Smt. Sona Devi, Wife of Ramashish Singh, Resident of village- Telkup P.S. Rohtas, District- Rohtas at Sasaram.
3. Manish Kumar, Son of Ramashish Singh, Resident of village- Telkup P.S. Rohtas, District- Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. Smt. Durgesh Nandini Wife of Gopal Kumar, Resident of Mohalla- New Dilian (Dehri) P.S. Dehri, District- Rohtas at Sasaram.
3. Devanti Devi, Wife of Gopal Ram, Resident of Mohalla- New Dilian Ward No. 20 (Dehri), P.S. Dehri, District- Rohtas at Sasaram.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Jai Prakash Singh
For the Respondent/s :

**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT**

13-11-2019

Heard learned counsel for the petitioner.

2. The present application under Article 227 of the Constitution of India has been filed *“against the order dated 03.09.2019, passed by the Additional District Judge-XV, Rohtas at Sasaram in Misc. Appeal No. 22 of 2017 in connection with Title Suit No. 1084 of 2016 (Annexure-7), rejecting the prayer under Order 43 Rule 1 CPC for grant of temporary injunction restraining any construction over the suit land.”*

3. The short facts according to the petitioners are that out of 47 decimal of land vide C.S.Khata No.43 (corresponding to R.S. Khata No. 489), C.S.Plot No. 151 (corresponding to



R.S.Plot No.361) situated in Mohalla New Dillian, P.S. Dehri, Thana No. 162 in the district of Rohtas which had belonged to one Satya Narain Singh, the petitioners purchased an area of 6^{2/3} dhors & 6^{2/3} dhors on 23.08.1999 through three registered sale deeds making a complete block and came into physical possession of the same in respect of which their names were also mutated. It is stated that after providing passages out of the aforesaid 47 decimal of land, no land remained in Plot No. 361 and as such, the area of 17 dhors said to have been purchased on 17.03.2010 and 28.12.2015 as part of Plot No. 361 was forged and fabricated deed/document. A report of the pleader commissioner was submitted which found construction material at the spot and some construction over the disputed land. As such, the petition dated 08.03.2017 under Order 39 Rule 1 CPC for restraining the respondents through an order of temporary injunction was filed, which was however rejected by order dated 12.10.2017. Civil Appeal No. 22 of 2017 was filed by the petitioners against such injunction order dated 12.10.2017, which, after hearing the parties, stood dismissed in terms of the impugned order dated 03.09.2019.

4. Learned counsel for the petitioners submits that in view of the finding of the pleader commissioner in his report that



construction material had been found at the spot as well as some construction had been made over the disputed land, it was a fit case for grant of temporary injunction. The impugned order has been passed without appreciating this aspect of the matter in its correct perspective. It is submitted that the learned court below ought to have ensured that nature of the suit land was required to be preserved until disposal of the suit. Rejection of the injunction petition amounted to allowing the respondents to make encroachment upon the suit land.

5. I have considered the submission of the learned counsel for the petitioners as well as the materials on record. Perusal of the impugned order dated 03.09.2019 discloses that the learned court below has taken note of the fact that the pleading and documents of the petitioners failed to reveal and support the claim of the petitioners that the land by way of passage had been left by the erstwhile owner Satya Narain Singh as nothing in this regard has been mentioned in the sale deed or other documents. Moreover, the petitioners failed to show any disturbance or construction etc. by the respondents over the suit land in the two years between filing of the civil miscellaneous appeal and its disposal, in order to show that any irreparable loss was likely to be caused to the petitioners. The scope of



interference by this Court under Article 227 of the Constitution of India is well settled. Learned counsel for the petitioners has not been able to demonstrate that the learned court below has acted beyond the bounds of its authority or that the impugned order otherwise suffers from any error of jurisdiction or perversity.

6. In the above circumstances, this Court is not inclined to interfere in the matter. The petition stands dismissed.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	Nil
Uploading Date	18. 11.2019
Transmission Date	

