

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.736 of 2018

1. Md. Naushad Alam and Ors Son of Late Naimuddin Pawariya.
2. Md. Hasmuddin Pawariya, Son of Late Mahbul Pawariya.
3. Md. Syed Pawariya @ Syed, Son of Late Mahbul Pawariya.
4. Rafi Pawariya, Son of Tahsil Pawariya.
5. Ali Akhtar Pawariya, Son of Late Tahsil Pawariya.
6. Md. Manir Ahmad @ Manir Ahmad, S/o Late Safi Pawariya.
7. Fazlu Rahman, Son of Late Safi Pawariya, All resident of Chap Tole, Teghra, P.S.- Sahayak Sarai, Siwan, District Siwan.

... .. Appellant/s

Versus

1. Anjan Kumar Upadhyay S/o Late Kalipad Upadhyay.
2. Sanjay Kumar Upadhyay, S/o Late Kalipad Upadhyay. Both Resident of Mohalla- Mauleshari Chowk, Kagji Mohalla, Siwan, P.S. Siwan Nagar, District- Siwan.
3. Shahid Siddiqui, Son of Late Shaukat, Resident of Mohalla- Purana Kila, Siwan, P.S. and District- Siwan.
4. Munna Mian, Son of Late Sultan Mian, Resident of Village- Pratappur, P.S. Hussainganj, District Siwan.
5. Mokhtar Ahmad, S/o Kasim Mian, Resident of Makdum Sarai, P.S. Sarai O.P. Siwan, District Siwan.
6. Samullah, Son of Saheb Hussain, Resident of Village- Hardiya, P.S. Sarai O.P. Siwan, District Siwan.
7. Dhanu Hajam, S/o Ezaz Ahmad, Resident of Purana Kila Pokhra, P.S. Siwan Nagar, District- Siwan.
8. Jabbar Mian, Son of Eltaf Mian, Resident of Village- Madukan, P.O. P.S.- Hussainganj, District Siwan.
9. Ahsanool Haque Hazi, Son of Yusuf Mian, Resident of Village- Hardiya, P.S.- Sahayak Sarai O.P., District- Siwan.
10. Ravindra Singh, Son of Hira Singh, Resident of Chap Tola, Teghra, P.S. Sarai O.P. P.O.- Chap, District- Siwan.
11. Lakhi Devi, W/o Nagina Rai, Resident of Bharathwaliya, P.S. Sahayak Sarai O.P., District- Siwan.
12. Vishwanath Bhagat.
13. Raju Kumar Bhagat.
14. Deepak Kumar Bhagat.
15. Vishal Kumar Bhagat. Respondents No. 12 to 15 sons of Mahendra Bhagat, Resident of Village- Shahwajpur, P.S.- Hussainganj, District- Siwan.



16. Lakshmi Singh, Son of Balesar Singh, Resident of Village- Sona Pipra, P.S. G.B. Nagar, P.O. Pipra, District Siwan.
17. Upendra Singh, Son of Sriram Singh, Resident of Village- Renua, P.S. Hussainganj, P.O.- Hussainganj, District- Siwan.
18. Fakre Alam, Son of Tazmool Alam, Resident of Village- Chhata, P.O.- Hussainganj, P.S.- Hussainganj, District- Siwan.
19. Neshat Ahmad, Son of Jamal Ahmad, Resident of Siwan Darbar, P.O. P.S.- Siwan Town, District- Siwan.
20. Ranjan Kumar Yadav, Son of Raj Kishore Chaudhary, Resident of Village- Dharmkanta Chapra Road, Mahpur, P.S.- Sarai O.P., District- Siwan.
21. Md. Wakil, Son of Khedaru Mian.
22. Md. Hanif Mian, Son of Khedaru Mian. Respondents No.21 and 22 Resident of Village- Sarai, P.S.- Sarai O.P., P.O.- Siwan, District- Siwan.
23. Md. Alwar, Son of Yasmuddin, Resident of Mohalla- Naya Bazar Darbar, P.S. P.O.- Siwan Town, District- Siwan.
24. Awadh Kishore Sharma, Son of Shiv Narayan Sharma, Resident of Samrat Diesel Siwan, P.S. P.O.- Siwan Town, District- Siwan.
25. Manoj Kumar Singh, Son of Madan Singh, Resident of Village- Pratappur, P.S.- Hussainganj, P.O.- Hussainganj, District Siwan.
26. Mahmuddin Pawariya, Son of Rahim Pawariya, Resident of Village- Jasauli Paikauli, P.S.- Pachrukhi, District- Siwan.
27. Naushad Ali, Son of Abdul Rashid, Resident of Chap Tole, Teghra, P.S.- Sarai O.P., District Siwan.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr.Surendra Kishore Thakur
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 11-04-2019

Heard the parties.

2. This Miscellaneous Appeal has been filed against the order dated 10.07.2018 passed by Sub-Judge-I, Siwan in Title Suit No. 168 of 2017 by which the learned court below has rejected the application filed by plaintiff for grant of injunction dated 03.02.2018 against defendant Nos. 12 to 12(g).



3. Plaintiff had filed the suit for declaration of title and confirmation of possession over the suit land. It was submitted that plaintiff has Title and possession over the suit land but defendant Nos. 1 to 24 are interfering with the peaceful possession of plaintiff and want to dispossess him and making construction over the suit land and in fact has raised some constructions and are trying to alienate the suit land as such prayed for interim injunction and on petition of plaintiff notices were issued and defendant Nos. 10 and 17 appeared and written statement was filed but when the matter was called out no one appeared on behalf of defendant and the trial court by order dated 30.06.2017 granted interim injunction in favour of plaintiff till pendency of injunction petition on 28.07.2017.

4. Application was filed by the plaintiff under order 26 rule 9 of CPC for appointment of Pleader Commissioner. Defendant Nos. 4, 10, 14, 24, 5, 3, 6, 9 and 17 appeared and filed their written statement and show cause and the court appointed a Pleader Commissioner and case was adjourned for 12.09.2017 for appearance of other defendants. Pleader Commissioner submitted its report.

5. On 17.10.2017 a substitution petition was filed on behalf of plaintiff and by order dated 03.11.2017 the trial



court passed an order of injunction in favour of plaintiff and restrained defendants from interfering with peaceful possession over the suit land and from alienating the suit land. It was submitted on behalf of plaintiff that suit land is their Khatiyani land and on plot Nos. 501, 500 and 499, Khata No. 54 defendants have started making construction. As defendant No. 12 was dead, his heirs were substituted by order dated 11.01.2018 as defendant Nos. 12 to 12 (g) and a petition was filed on their behalf under Section 114 of CPC to review the previous order of injunction and the matter was fixed for 25.01.2018. It was admitted by the plaintiffs that at the time of order of injunction defendant Nos. 12 to 12 (g) were not on the record and they were substituted on 17.10.2017. It was submitted on behalf of defendant Nos. 12 to 12 (g) the order of injunction has been obtained by suppressing the fact and keeping the court in dark. It has been held by the court that from the records, it is apparent that heirs of defendant No. 12 were not on the record at the time of passing of order of injunction.

6. Fresh injunction petition dated 03.02.2018 was filed by plaintiff in which it was submitted that suit has been filed for declaration of title and the disputed property is their ancestral property, upon which they are coming on possession



but defendant Nos. 12 to 12(g) are interfering in their peaceful possession and they came to know subsequently that defendant No 12 is dead and their heirs were substituted and on petition filed by defendant Nos. 12 to 12 (g) the order of injunction was recalled and thereafter heirs of defendant Nos. 12 i.e. 12 to 12 (g) are creating disturbance over the land and plaintiffs are Khatiyani owner of the land, as such balance of convenience prima facie case is in their favour and if injunction is not granted they will suffer irreparable loss.

7. Show cause has been filed on behalf of defendant No. 12 to 12 (g) in which they have denied the title and possession over the suit land of plaintiff as far as same relates to plot Nos. 499, 500, 501 and 504. It was submitted that the Khatiyani Raiyat of whom plaintiffs claim to be descendants namely, Jan Pawariya @ Chana Pawariya executed sale deed with respect to plot Nos. 499, 500, 501 and 504 in favour of Kalipado Chaterji on 01.07.1933 and who executed sale deed of 13 Kathas and 9 dhoors in favour of Mahendra Bhagat on 09.05.1963 and defendant Nos. 12 to 12 (g) are his descendants and thereafter 12 shops has been constructed over it and the lands have been mutated in the name of heirs of Mahendra Bhagat. Defendant Nos. 12 to 12(g) have filed a registered sale



deed in support of their claim of title and possession over the disputed lands.

8. The trial court has held that sale deeds are registered and their genuiness is not doubted. Pleader Commissioner also in his report found construction over the disputed plots and rejected the application of plaintiff for grant of injunction by order dated 10.07.2018 against which appellants have filed this Misc. Appeal.

9. After hearing the learned counsel for the appellant and perusing the record and order as impugned dated 10.07.2018 refusing injunction of the plaintiff/appellant this Court finds that plaintiff/appellant had filed a suit for declaration of title over the suit land on the ground that they are descendants of Khatiyani Raiyat and defendants are bent upon to disposses them and on basis of said contention interim injunction was granted to them and on appearance of other defendants temporary injunction was granted, however, defendant No. 12 was dead and their heirs were subsequently substituted and they filed an application for review of order as the same was granted in their absence and keeping the court in dark by suppressing the material fact and after hearing the parties the order granting temporary injunction was recalled by



order dated 25.01.2018.

10. Plaintiff/appellant thereafter again filed an injunction petition dated 03.02.2018 for grant of injunction in which defendant Nos. 12 to 12 (g) filed their show cause bringing on record the sale deeds executed by the Khatiyani Raiyat in favour of Kalipado Chaterji on 01.07.1933 and he executed sale deed on 09.05.1963 in favour of Mahendra Bhagat who is the ancestor of defendant Nos. 12 to 12 (g) and thereafter they are coming in possession over the disputed land and have also constructed shops and as such rejected the injunction petition filed on behalf of plaintiff/appellant.

11. This Court does not find any error, illegality or irregularity in the order dated 10.07.2018 refusing grant of temporary injunction and rejecting the application of plaintiff/appellant under order 39 rule 1, 2 as such the present Misc. Appeal is devoid of any merit and is accordingly dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.04.2019
Transmission Date	N.A.

