

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.397 of 2019

1. Kumar Bimal Prasad Singh, S/o Late Hari Krishna Prasad Singh
2. Kislay Kishore, S/o Late Sumant Kumar Singh
3. Prem Shankar Sharan Singh, S/o Late Uma Shankar Sharan Singh
4. Diwakar Prasad Singh, S/o Late Janardan Prasad Singh,
All are Residents of Village- Rajauli, P.O. and P.S. Rajauli, District-
Nawada, Pin- 805125.

...Plaintiffs/ Appellant/s

Versus

1. Hare Ram Singh, S/o Sri Krishna Singh @ Krishnadeo Singh
2. Smt. Dropati Devi W/o Krishna Singh @ Krishnadeo Singh
3. Siya Ram Singh, S/o Krishna Singh @ Krishnadeo Singh
All Residents of Village Rajauli, Babhantoli, P.O. and P.S.- Rajauli, District-
Nawada, Pin- 805125.
4. Ajit Kumar, S/o Chandra Deep Singh, Resident of Village- Debaspora, P.O.-
Baghi, P.S.- Katrisarai, District- Nalanda, Pin- 805115.

Defendant 1st set/ respondent 1st set

5. Ram Pravesh Singh
6. Chandrika Prasad Singh
7. Balmiki Singh,
All Sons of Harihar Singh
8. Smt. Mani Devi, W/o Sri Bachhu Singh,
9. Rabi Devi, W/o Mudrika Singh,
All Residents of Village- Puri, P.O.- Pawapuri, P.S.- Giriyak, District
Nalanda, Pin- 803115.

Defendants 2nd set / respondents 2nd set

Appearance :

For the Appellant/s	:	Mr. Raj Kishore Prasad Singh, Mr. Bal Bhushan Choudhary, Advocates
For the Respondent/s	:	Mr. T. N. Matin, Sr. Advocate Mr. Vibhuti Ranjan Sonvadra, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT

Date : 13-05-2020

Heard the parties.

2. This miscellaneous appeal has been filed on
behalf of plaintiffs-appellants against the order dated 30.5.2019



passed by learned Sub-Judge, VII, Nawada in title suit No. 427 of 2018 by which the order of *status quo* granted on 14.3.2019 was vacated and application of plaintiffs/appellants filed under Order 39 Rules 1 and 2 for grant of temporary injunction against defendant nos.1 to 9 restraining them from alienation of suit land and interfering with their peaceful possession was refused.

3. Plaintiffs / appellants have filed title suit being title suit No.427 of 2018, which is pending in the court of Sub-Judge-VII, Nawada for declaration of their right, title, interest, possession and for permanent injunction over the suit land and to further declare that defendant 1st set have acquired no right, title and interest in the suit land on the basis of six registered sale deeds dated 26.6.2018 and 29.6.2018 executed by defendant 2nd set in favour of defendant 1st set which are void and without consideration and not binding upon plaintiffs and are fit to be set aside.

4. Plaintiffs in their petition filed under Order 39 Rule 1 and 2 stated that defendants are negotiating with the local persons to alienate the suit land, with intent to cause loss and harm to the plaintiffs and are also trying to dispossess the plaintiffs from the suit land whereas plaintiffs are in peaceful possession over the suit land and defendants have never come in



possession over the suit land on the basis of above sale deeds. Plaintiffs have strong prima facie case and balance of convenience also lies in their favour and they would suffer irreparable loss if defendants succeeded in transferring the suit property creating third party right.

5. Defendant nos.1 to 9 have appeared and filed their show cause and have stated that plaintiffs do not have any prima facie case and they are not the legal heirs or successors of Kanhai Singh from whom they claim to have derived their title. Neither balance of convenience lies in their favour nor they will suffer any irreparable loss if injunction is refused.

6. Plaintiffs in their plaint have pleaded that ancestors of plaintiffs were landlords having their proprietary rights and apart from it, had their Khas and Bakast land in several villages who settled their Khas land with several persons including Kanahi Singh, son of Umrao Singh who was one of their family members and recognized him as Raiyat. Proprietary right of landlords vested in the State of Bihar after abolition of Jamindari and said landlords while settling lands to different raiyats also fixed rent and accordingly, rent receipts were granted to all settlees on payment of rent to the landlord and landlords with details of lands, area and rent of all the settlees



of the lands of village Ghasiadih, P.S. Rajauli, Nawada submitted return before the Collector including that of Kanahi Singh who became raiyat over the land and register II was opened in his name and rent receipts granted. R.S. khatiyani was also prepared in the name of Kanahi Singh under Khata No.4 having 18 plots measuring 15.35 acres which was published on 18.9.76.

7. No objection was raised by anyone during revisional survey operation and Kanahi Singh died issue-less during jointness and his property was inherited by the ancestors of plaintiffs/appellants who remained in joint cultivating possession and subsequently there was oral partition in the year 1990 and they came in possession over their respective shares. The compensation with respect to acquisition of 2.25 acres of land of Ghasiadih recorded in the name of Kanahi Singh was paid to the joint family of plaintiffs/appellants. Anchal inspector after inquiry, submitted his report dated 23.10.2018 stating therein that rent is being paid by the members of family of plaintiffs/appellants.

8. It was lastly submitted that plaintiffs/appellants are owners and title holders of the suit land and, as such, they have every right to protect and preserve their properties from



being wasted, damaged or alienated by the defendants/respondents.

9. Defendants / respondents 2nd set executed sale deed in favour of defendants / respondents 1st set which are forged and fabricated for which plaintiffs/appellants had to lodge FIR and on basis of said forged sale deed, peaceful possession of plaintiffs/appellants was being threatened for which proceedings under Section 144 of Cr.P.C. were initiated.

10. Respondents in their counter affidavit have stated that defendant 2nd set has executed six sale deeds in favour of defendant 1st set. The disputed land is admittedly in the name of Kanahi Singh, son of Umrao Singh but the dispute is regarding successors of Kanahi Singh and both parties claim to be his successors.

11. Plaintiffs do not have any document of title nor lands are mutated in their favour rather lands have been mutated in favour of defendants and rent receipts are issued to them. The allegation of cheating and forgery in creation of registered sale deed are denied. Kanahi Singh was original resident of village Puri, P.O. and P.S. Giriyak, District, Nalanda and vendors of defendant nos.1 to 9 are also resident of said village who are successors to the property of Kanahi Singh. There is a will



dated 25.6.1970 executed by Kanahi Singh in favour of Ajay Shankar Sharan Singh of village, Rajauli, who is own brother of plaintiff no.3, Prem Shankar Singh. Kanahi Singh had relationship in village Rajauli and Umraon Singh was resident of village Puri.

12. Plaintiffs have produced different genealogy before the different courts to suit their convenience and interest. In title suit no.215 of 2014 Kanahi Singh has been shown as nephew of Rohan Singh whereas in present suit, he has been shown as great-grandson of Rohan Singh. Kanahi Singh owned and possessed lands at village Ghasahdih (Rajauli P.S.) and legal heirs of Kanahi Singh of village Puri have sold these lands through various sale deeds. Umraon Singh and Kanahi Singh were not family members of plaintiffs, as such, plaintiffs cannot succeed to the property of Kanahi Singh.

13. Kanahi Singh is the original resident of village Puri P.S. Giriyak, District, Nalanda who had three brothers and defendant / respondent 2nd set are nephews of Kanahi Singh who had landed properties both at village Puri in Nalanda district as well as Ghasiadih in Rajauli in Nawada district from whom defendant/respondent 1st party purchased land in question.



14. After hearing the parties and considering the materials available on record, it is an admitted fact that the suit property is situated in Village Ghasiadih, P.S. Rajauli, District, Nawada and plaintiffs/appellants also belong to same village and property stood in the name of late Kanahi Singh who died issue-less and plaintiffs claim their title and possession over the land as his successor whereas defendant 2nd party are resident of village Puri, District, Nalanda and claim to inherit the properties left by late Kanahi Singh being his nephew.

15. The land measuring 15.35 acres situated in village Ghasiyadih, P.S. Rajauli in the district of Nawada was recorded in R.S. khatiyani published on 18.9.76 in the name of Kanahi Singh and after his death, plaintiffs/appellants claim to have inherited it and came in possession over it and same was partitioned in 1990 among the joint family members and 5.57 acres of land was allotted to one of the co-sharers, Ganesh Shankar Vidyarthi and same was mutated and jamabandi was created in his name in the year 1992-93 and remaining lands remained in joint possession of the appellants. 2.22 acres of said land was acquired by government for construction of NH 31 and Award was prepared in the name of Kanahi Singh as per revenue records but compensation was paid to the appellants'



joint family. After such acquisition, 7.57 acres of land was left in the branch of plaintiffs / appellants and in one of the plots, pumping set is installed and electric connection stands in the name of Kishalya Kishore (plaintiff no.2), from which it is apparent that after death of Kanahi Singh who died issue-less, his landed property came in cultivating possession of plaintiff/appellant and remained in their possession, whereas defendant 1st set are strangers to the family and admittedly resident of village Puri P.S. Giriyak in Nalanda district and were never in possession of suit land but executed six sale deed in favour of defendant 1st party measuring 7.57 $\frac{3}{4}$ acres of land.

16. From the facts pleaded, it appears that plaintiffs have a good prima facie case to be adjudicated by the trial court. It is well settled proposition of law that if a lis has been admitted for adjudication then it becomes the duty of the court to preserve the subject matter of the litigation by an appropriate order so that same is available at the time of final adjudication and decree does not become a barren one.

17. The Apex Court in **Maharwal Khewaji Trust, Faridkot Vs. Baldev Dass**, since reported in [AIR 2005 SC 104] has held in paragraph no. 10 which is reproduced as under:-

“10. Be that as it may, Mr. Sachhar is



right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.”

18. Accordingly, the order dated 30.5.2019 passed by



learned Sub-Judge, VII, Nawada in title suit No. 427 of 2018 is set aside and parties are directed to maintain status quo over the suit land during pendency of suit.

19. Accordingly, the miscellaneous appeal stands allowed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	02.09.2019
Uploading Date	13.05.2020
Transmission Date	NA

