

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.296 of 2020

1. Jagannath Sharma Son of Late Ram Raushan Sharma Resident of Village-Sikarpur, P.S.- Sonpur, District- Saran.
2. Ragunath Sharma Son of Late Ram Raushan Sharma Resident of Village-Sikarpur, P.S.- Sonpur, District- Saran.
3. Ravindra Sharma Son of Late Ram Raushan Sharma Resident of Village-Sikarpur, P.S.- Sonpur, District- Saran.
4. Birendra Sharma Son of Late Ram Raushan Sharma Resident of Village-Sikarpur, P.S.- Sonpur, District- Saran.
5. Gopal Sharma Son of Late Ram Raushan Sharma Resident of Village-Sikarpur, P.S.- Sonpur, District- Saran.

... .. Petitioner/s

Versus

Lalan Kumar Yadav Son of Dashrath Prasad Yadav Resident of Village-Khemni Chak (Fakarabad), P.S.- Sonpur, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhay Shankar, Adv
		Mr. Subodh Kumar, Adv.
For the Respondent/s	:	Mr. Vijay Kumar Srivastva, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 06-07-2022 Heard Mr. Abhay Shankar, learned counsel for the petitioner and Mr. Vijay Kumar Srivastava, learned counsel for the respondents.

2. Petitioner is a defendant in a suit filed by the plaintiffs bearing Title Suit No. 288/2016 for declaration of title upon the suit land.

3. The present application has been filed by the petitioner/defendant being aggrieved by order dated 10.12.2019 passed in Misc. Appeal No. 18/2018 by the lower appellate



court whereby order of temporary injunction dated 02.07.2018 passed by the learned court below has been upheld.

4. The plaintiffs/respondents filed a suit bearing Title Suit No. 288/2016 against the petitioner/defendant for declaration of his title over 10 *Katthas* of land comprising of Plot No. 500 pertaining to Khata No. 130 situated at Shikarpur, P.S. Sonapur, District-Saran. In the said suit, the plaintiffs/respondents filed a petition for temporary injunction for restraining the petitioner/defendant from dispossessing the plaintiff from the suit land and further from damaging the standing crops upon the same.

5. Learned court below after having been satisfied that the plaintiff has got *prima facie* case, balance of convenience and irreparable loss shall cause to the plaintiff, granted temporary injunction and allowed the application filed by the plaintiff under Order 39 Rule 1 & 2 of the CPC restraining the defendants from damaging the crops standing over the suit land and from dispossessing the plaintiffs from the suit land without due process of law.

6. Both the trial court as well as lower appellate courts after taking into consideration the fact that plaintiffs/respondents filed revisional survey record of rights,



gift deed, sale deed, rent receipt of disputed land in support of his claim has come to the conclusion that plaintiffs/respondents have got *prima facie*, balance of convenience and irreparable loss shall cause to the plaintiffs. Accordingly, the order of temporary injunction in favour of the plaintiffs was passed.

7. Learned counsel for the petitioner/defendant referring to a decision of Hon'ble Apex Court in the case of ***Dalpat Kumar and Ors. Vs. Prahlad Singh and Ors.*** as reported in ***AIR 1993 SC 276*** submits that *prima facie* case should not mean as *prima facie* title and mainly because some documents of title were filed, does not mean that the plaintiff has got *prima facie* case. He further submits that triple test has not been properly considered by both the courts i.e., learned trial court as well as lower appellate court.

8. On the other hand, learned counsel for the plaintiffs/respondents submit that it is admitted case of the petitioner/defendant that a big chunk of land measuring about 25 *Katthas* belong to one Ram Pyari Devi who sold the same in favour of one Raktu Mistri in 1965 and the petitioner/defendant are claiming to be the heirs of the said Raktu Mistri but in support of his claim, no chit of paper has been produced by the petitioner/defendant. He next submits that on the other hand, the



plaintiffs/respondents have produced all the documents including the sale-deed executed by the only son of Ram Pyari Devi, the erstwhile owner of the disputed property.

9. Having heard the learned counsel for the parties and after going through both the impugned orders, I am satisfied that the learned lower courts have properly exercised their jurisdiction and after taking into consideration all the relevant facts and after arriving at the conclusion that the plaintiffs/respondents have got *prima facie* case, balance of convenience and irreparable loss, have passed the order of injunction. Accordingly, in my opinion, the learned courts below have not committed any material irregularity and jurisdictional error while granting temporary injunction in favour of the plaintiffs/respondents.

10. Hence, this applications stands rejected.

(Anil Kumar Sinha, J)

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