

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.75 of 2022

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Birendra Prasad Yadav @ Virendra Ray Son of Hari Kishun Rai @ Ram Kishun Ray Resident of Village - Pipra Khan, P.O. - Madhurapur, P.S. - Phenhara, District- East Champaran.

... .. Petitioner/s

Versus

1. Shiv Sah Son of Late Budhan Sah Resident of Village - Madhuban, P.O. - Madhuban, P.S. Madhuban, District- East Champaran.
2. Santosh Kumar Son of Late Jagdish Prasad Sahu Resident of Village Madhuban, P.O. - Madhuban, P.S. Madhuban, District- East Champaran.
3. Arun Kumar Singh Son of Late Baleshwar Singh Resident of Village - Dubaha, P.O. - Krishna Nagar, P.S. - Madhuban, District- East Champaran.
4. Alok Kumar Singh Son of Late Baleshwar Singh Resident of Village - Dubaha, P.O. - Krishna Nagar, P.S. - Madhuban, District- East Champaran.
5. Ajit Kumar Singh Son of Late Baleshwar Singh Resident of Village - Dubaha, P.O. - Krishna Nagar, P.S. - Madhuban, District- East Champaran.
6. Nilam Devi Wife of Umashankar Singh, D/o Late Kumar Baleshwar Singh Resident of Village - Saen, P.O. - Saen, P.S. - Kanti, District- Muzaffarpur.
7. Raj Kishore Prasad Son of Ram Chandra Sah Resident of Village - Madhuban, P.O. - Gulbara Madhuban, P.S. - Madhuban, District- East Champaran.
8. Prabhunandan Son of Sri Jhapassi Prasad Resident of Village - Madhuban, P.O. - Madhuban, P.S. - Madhuban, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pravin Kumar

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 20-06-2022 Heard Mr. Pravin Kumar, learned counsel for the petitioner.

The petitioner is aggrieved by the order dated 03.01.2022 passed by learned Additional District Judge - 19th , Motihari, East Champaran in Title Appeal No. 26 / 2020



whereby learned court below has granted injunction restraining the respondent 3rd set from alienating and / or creating third party right in the suit land described in Schedule 3 of the plaint till the disposal of the appeal.

Learned counsel for the petitioner submits that a suit bearing Title Suit No. 674 of 2011 was filed by appellant – plaintiff for declaration of title and recovery of possession which was dismissed on contest and against the dismissal of the Title Suit, appellant- defendant 1st set filed a title appeal bearing Title Appeal No. 26 / 2020 in which an application under Order 39 Rule 1 and 2 of the C.P.C. was preferred by appellant -defendant 1st set herein for restraining the petitioner from raising any construction upon the suit land and / or alienating the same described in Schedule 3 of the plaint till disposal of the appeal.

Learned counsel for the petitioner submits that in paragraph 8 of the plaint the appellant - plaintiff has admitted that a *pakka* house is already existing upon the suit land. He further submits that the petitioner - respondent 3rd set is in possession of the suit land and the petitioner has no intention to raise further construction and / or alienate the suit property. Accordingly, submission is that there was no occasion for the



learned appellate court to pass order of injunction.

From perusal of the impugned order it appears that the learned court below has recorded that there is *prima facie* case in favour of the appellant and the appellant / plaintiff will suffer irreparable loss if order of injunction is not granted.

In view of the submission made by learned counsel for the petitioner that petitioner has no intention to raise any construction upon the suit land and he is in possession of the suit property, I do not find any reason to interfere with the impugned order. Further, the learned court below has found *prima facie* case in favour of the appellant and and it is settled principle of law that the *lis* has to be maintained during pendency of the suit / appeal. Accordingly, I do not find any infirmity in the order of learned court below.

This application is accordingly dismissed.

(Anil Kumar Sinha, J)

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