

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.332 of 2012

Md. Fakhre Alam S/o Hazi Nurul Hoda R/o Mohalla Panibagh Line, P.O-
Kishanganj, P.S.- Kishanganj, Distt- Kishanganj.

... .. Appellant/s

Versus

1. Noor Alami S/o Late Hazi Nurul Hoda R/o Panibagh, Line, P.O., P.S. and Distt- Kishanganj.
2. Md. Sharif S/o Late Ainu Hoda R/o Khanquah Chowk, Line, P.O., P.S. and Distt- Kishanganj.
3. Md. Shamsuzzaman S/o Late Ainul Hoda Resident of Khanquah Chowk, Line, P.O., P.S. and Distt- Kishanganj.
4. Abrarul Haque S/o Hazi Azizul Hazque Resident of Saudagarpatty, P.O., P.S. and Distt- Kishanganj.
5. Ahmad Hussain S/o Md.Jalauddin Resident of Teusa, P.O., Distt- Kishanganj.
6. Abdul Hussain S/o Md. Jalauddin R/o Teisa, P.O.- Distt- Kishanganj.
7. Tanmur Alam S/o Md. Jalauddin R/o Teisa, P.O.- Distt- Kishanganj.
8. Tabrez Alam S/o Md. Jalauddin R/o Teisa, P.O.- Distt- Kishanganj.
9. Anwar Alam S/o Md. Jalauddin R/o Teisa, P.O.- Distt- Kishanganj.
10. Jyoti Prasad S/o Sri Shiv Shankar Prasad Resident of Loharpatty Road, P.O. P.S. and Distt- Kishanganj.
11. Iftekhhar Nazari S/o Late Sultan Hussain Resident of Loharpatty Road, P.O. P.S. and Distt- Kishanganj.
12. Mohmooda Khatoon W/o Israrul Haque Resident of Village Galkora, P.O.- Khagaria, Distt- Khagaria, At Present Resident of Village- Rahmat Nagar, Near Karbala, P.O.- Kishanganj, Distt- Kishanganj.
13. Tanveer S/o Md. Mohiuddin Resident of Moti Bagh, Karbala, P.O. P.S. and Kishanganj.
14. Arsun Ara W/o Iqubal Resident of Rahmat Nagar, Karbala, P.O., P.S. and District- Kishanganj.
15. Anwari Khatoon W/o Md. Anwar Resident of Karbala, P.O. P.S. and Distt- Kishanganj.
16. Jangey Alam S/o Ata Kalim Resident of Loharpatty Road, Resident of P.O. P.S. and Distt- Kishanganj.
17. Nasiruddin S/o Shamsul Haque Resident of Loharpatty, Road, Karbala, P.O., P.S and District- Kishanganj.
18. Mainuddin S/o Aimuddin Resident of Teusa, P.O.- Teusa, P.S.- Distt- Kishanganj.
19. M/S Azad Transport Company Pvt Ltd. through its proprietor Saurabh Tekriwal Resident of 1855/3, Wazir Singh Estate, Chunna Mandi, Pahavganj, New Delhi, Present Resident of Shastri Marg Kishanganj, P.O.,



P.S. and Distt- Kishanganj.

20. Sarwar Akhtar, Nawab @ Sanountar Akhtar Nawab S/o Shamim Akhtar Village- Guabari, P.S.- Bahadurganj, Distt- Kishanganj.
21. Nagmi Parveen W/p Md. Shakeel Resident of Rahmat Nagar Ward No. 7, Bahadurganj, P.S.- Bahadurganj, Distt- Kishanganj.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Awanish Kumar Pandey, Advocate Mr. Ashutosh Tripathy, Advocate
For the Respondent/s	:	Mr. Amal Kumar Sinha, Advocate
For the Respondent Nos. 12,14,15 & 16	:	Mr. Md. Rashid Alam

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 29-11-2022

The present appeal has been preferred against the order dated 13.4.2012 passed by the learned Sub Judge-1, Kishanganj in Title Suit No. 05 of 2009 by which the injunction petition preferred by the plaintiff-appellant was rejected.

2. The matrix of facts giving rise to the present appeal is/are as follows :-

3. A Title Suit No. 05 of 2009 was preferred by the plaintiff-appellant before the learned Sub Judge-1, Kishanganj for partial partition of the land against the defendant-respondent 1st set and the purchaser of the parts of the said suit land (defendant 2nd set).

4. The case of the plaintiff-appellant in the said Title Suit is/was that one Roshan Ali was the ancestor of both the



plaintiff-defendant 1st party. He was survived by two sons, Ainul Hoda and Hazi Nurul Hoda who inherited half share each of their father's property.

5. Ainul Hoda gifted his entire property amongst his two sons namely, Md. Sharif and Shamshuzzaman (defendant Nos. 2 and 3 respectively). On 7.9.1962, Hazi Nurul Hoda also executed the gift deed in favour of the plaintiff-defendant No. 1.

6. Although, the gifts were made by both the brothers, the boundary was not specified and as such, the same remained joint running in the name of the plaintiffs and the defendants.

7. The issue arose when the defendants executed some sale deeds and thus the plaintiff in view of the fact that there was no partition, filed the Title Suit No. 05 of 2009.

8. The case of the plaintiff-appellant is that during the pendency of the Title Suit, the defendant No. 1 executed a sale deed on 29.3.2011 whereafter the purchaser tried to take possession of the suit land prompting him to file an injunction petition against the defendants till the pendency of the suit.

9. The defendants-respondents herein filed the reply stating therein that under the Muslim Law, all the share-holders have interest independently and once the two brothers of Roshan Ali got half share each, it no longer remained joint and



as such being in possession of the land, he is entitled to execute the sale deed and the defendant 2nd set are bonafide purchaser of the land.

10. The next contention of the defendants-respondents was/were that although the suit has been filed for demarcating the boundary as also partition of the land, a bare perusal of the description shows that he has come for partial partition inasmuch as the entire land of original holder, Roshan Ali has not been brought in the suit.

11. The last submission of the defendant was that although the plaintiff-appellant want the Court to restrain the defendant from executing any sale deed, he himself has executed 'biyananama' dated 2.8.2010 for sale of his entire share of land (1 acre 13 decimal) and as such it is a clear case where not only he is enjoying the land allotted to him, he wants to interfere in the land allotted to defendant-respondents herein and though he himself is selling the land, he wants the defendants herein to be restrained.

12. The learned Court of Sub Judge-1, Kishanganj took up the matter on 13.4.2012 and after taking into account the documents as also the rival submissions of the parties held as follows :



- (i) the grounds put forward by the plaintiff is imaginary;
- (ii) the plaintiff has not come to the Court for the partition of the entire land rather it has come for partition of mere 5.15 acres of land and as such it can be clearly recorded that he has not come with clean hands;
- (iii) it is well settled principle that no injunction can be granted in case of partial partition;
- (iv) further, although the plaintiff alleges that the defendant executed land during the pendency of the suit, he himself executed 'biyananama' in 2010 (2.8.2010) when his own suit is pending;
- (v) as per the police report in Case No. 126M/2011, the plaintiff had given possession of the land in favour of the defendants who is in possession;
- (vi) these facts were suppressed by the plaintiff.

13. Accordingly, the learned Sub-Judge-I, Kishanganj rejected the injunction petition of the plaintiff-appellant herein.

14. Aggrieved, the present petition came to be filed.

15. Heard counsel for the parties.

16. Learned counsel for the appellant once again vociferously submitted that as the suit for partition of the land is pending and there is no demarcation of boundary, any



alienation of land will affect his cause in the suit. It was his further submission that the learned Court erred in holding that no injunction can be granted when the suit for partial partition has been filed. He further submitted that the plaintiff executed 'biyananama' of his own land which was allotted him and so far as the defendants are concerned, without any clear demarcation of boundary about which land is allotted to them, they are hell bent upon alienating the said land. The learned Court as such erred in not allowing the injunction petition.

17. Learned counsel for the respondents, on the other hand said that the order is perfectly justified inasmuch as it has been clearly held that the plaintiff did not come with clean hand as he did not file any suit for complete partition of the land rather for partial partition of the land. Further when the plaintiff himself executed the 'biyananama' in 2010 during the pendency of the suit, the defendant cannot be restrained from doing the same.

18. Having heard the rival submission of the parties, this Court is of the considered view that when the case of the plaintiff-appellant is that although pursuant to the half of the share granted to the two sons of Roshan Ali, there was no demarcation, the proper process would have been to file a suit



for complete partition of the land for demarcating the land.

19. Having not done so deliberately by filing suit for partial partition of the land, it is clear that the learned Court below rightly held that the plaintiff-appellant did not come with the clean hand.

20. Further, when the plaintiff-appellant did not deny the execution of 'biyananama' on 2.8.2010 during the pendency of the suit filed by him, it would have been improper on the part of the learned Court to restrain the defendant.

21. The learned Court as such was completely justified in rejecting the prayer of the plaintiff-appellant vide an order dated 13.4.2012.

22. This Court does not find any merit in the present appeal and it was rightly observed by the learned Court below that the plaintiff-appellant has not come with clean hand.

23. Accordingly, the appeal fails and the same is hereby dismissed.

(Rajiv Roy, J)

Ravi/Ajay-

AFR/NAFR	NAFR
CAV DATE	NA
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