

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.752 of 2022

Arising Out of PS. Case No.-310 Year-2022 Thana- PATLIPUTRA District- Patna

Ranjan Kumar Sharma (Advocate) @ Ranjan Sharma, Son Of Late Madan Singh, R/O Village- Shahar Rampur, P.S.- Naubatpur, District- Patna, At Present Residing At Flat No.-303 Of Kamla Apartment, Kurji, Digha P.S.- Digha, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar Through Chief Secretary, Govt. Of Bihar, Patna
2. The Director Of Police, District- Patna, Bihar, Patna
3. The District Magistrate, Patna, District- Patna, Bihar
4. The Senior Superintendent Of Police, Patna, District- Patna Bihar
5. Uttam Jha, Son Of Not Known To The Petitioner, Sub-Inspector Posted At Patliputra Bihar
6. The Station House Officer, Patliputra, P.S.- Patliputra, District- Patna, Bihar Bihar
7. Rahul Ramaswamy Son Of Late Saryug Prasad Singh Resident Of Boring Canal Road, P.S.- S.K.Puri, District- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Dinu Kumar, Advocate
For the State	:	Mr.Md. Irshad, AC to SC-1
For the Respondent no.7	:	Mr. Sanjay Singh, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 30-09-2022

The petitioner in the present case is seeking following reliefs:-

“(A) Commanding the respondents including Private Respondents to restore normal possession of the petitioner relating to file, books and other belongings and flat no. 103 of Badal Kutir 1st floor situated at Mohalla Nehru Nagar, P.S – Patliputra,



District- Patna, after opening the key locked up on 04-06-2022 at 12:30 PM by Patliputra Police Station including Uttam Jha Respondent no. 5 Posted in capacity of Sub-Inspector Patliputra police station District- Patna with connivance of Rahul Ramaswamy Respondent no. 7.

(B) For Commanding the respondents to take proper action against erring officials including Respondent no. 5 Uttam Jha who locked up flat no. 103 of Badal Kutir 1st floor situated at Mohalla Nehru Nagar, P.S. - Patliputra, District – Patna on 04-06-2022 at 12:30 PM over which the petitioner was put in possession on 14-04-2022 by vendor Reshma Kumari Daughter of Late Saryug Prasad Singh Resident of Harbanshwala, Dehradun, Uttarakhand with Connivance of Rahul Ramaswamy Respondent no. 7.

(C) Commanding the respondent to allow the petitioner to discharge the duty of advocate in running office at flat no. 103 of Badal Kutir 1st floor situated at Mohalla Nehru Nagar, P.S. - Patliputra, District – Patna.

(D) Also for necessary relief order/direction and give other consequential service benefit for which the petitioners are entitled in the eye of law as well as on facts of the case.”

2. The petitioner in the present case entered into an agreement for sale on 7th Day of March,2022 with one Reshma Kumari @ Nutan Sharma d/o late Sarju Prasad Singh, wife of



Shri Anshuman (not a party respondent) which is in respect of one Flat bearing No. 103 in Badal Kutir Apartment situated at Mohalla Nehru Nagar, P.S.- Patliputra, District-Patna for consideration amount of Rs. 50 lakhs. A copy of the agreement has been brought on record as Annexure '1' to the writ application. The agreement is notarised one and bears the signature of Notary. According to the terms and conditions mentioned therein, the petitioner had advanced a sum of Rs. 9 lakhs with a promise to pay the remaining amount of Rs. 41 lakhs to be paid to the vendor at the time of execution of registration of final transfer deed on or prior to 30.08.2022. According to the clause 10 of the Agreement, the physical and vacant peaceful legal possession of the said property shall be handed over to the vendor at the time of final transfer deed and receipt of final balance payment.

3. In the writ application, the petitioner claims that his vendor Reshma Kumari had put him in possession of flat No. 103 on 14.04.2022. This Flat is claimed in the share of the vendor against 40% of the land over which the Apartment has been constructed.

4. The petitioner has placed a document bearing "Possession Certificate –Cum- Delivery of Possession-Cum-



Acceptance of Possession”, according to this, the possession of the Flat in question was delivered to the petitioner to complete interior decoration and other suitable and habitable works.

5. The petitioner claims that he being an Advocate shifted his office in the said Flat on 14.05.2022 and started discharging his professional work from the said Flat. At this stage, it is alleged that when he left his office on 01.06.2022 at 11:00 a.m., immediately on the same day at 12:00 noon he got information from the Guard of the Apartment that about 5-6 persons were seen breaking the locks of Flat No. 103. The petitioner came there and saw those 5-6 persons and identified three of them namely, Rahul Ramaswamy son of late Sarju Prasad Singh and brother of Reshma Kumari, Ravi Raushan son of Anil Kumar Singh and Anil Kumar Singh son of Late Nageshwar Prasad. On protest made by the petitioner he was threatened and Ravi Raushan pointed pistol on the temple of the petitioner, Anil Kumar Singh snatched golden chain and Rahul Ramashwami removed the name plate of Advocate saying you are Advocate of Title Suit No. 821 of 2013 and Probate Case No. 137 of 2021 and hence, he would not be allowed to continue your office. It is alleged that many files of the petitioner were torn and taken away. In this connection the



petitioner has registered Patliputra P.S. Case No. 310 of 2022.

6. Mr. Dinu Kumar, learned counsel for the petitioner submits that it is a case of forceful dispossession of the petitioner from flat in question. He has drawn the attention of this Court towards the counter affidavit filed on behalf of the Senior Superintendent of Police, Patna who has supervised the case and has issued Supervision Report-cum-Report II dated 25th July, 2022. It is stated therein that with respect to the occurrence dated 5th June, 2022 the informant namely Anup Kumar, son of Ajay Kumar Singh has lodged the FIR being Patliputra P.S. Case No. 320 of 2022 under Section 448 of the Indian Penal Code against this petitioner with an allegation that after breaking the lock of Flat No. 103, the household articles were thrown here and there and the flat was captured. The said Anup Kumar has stated in course of investigation that during the lifetime of father of Reshma Kumari, he had taken the said flat on rent under a lease deed dated 9th January, 2021 for a period of 6 years. Shri Saryug Prasad Singh, the father of the vendor of the petitioner is admittedly the original title holder of the property who died on 19th April, 2021. It is stated that after his death, Flat No. 103 was given by Anup Kumar to the accused Rahul Ramaswami, who is the son of Saryug Prasad Singh.



Rival claim of the petitioner is that he entered into an agreement for sale with Reshma Kumari who is daughter of late Saryug Prasad Singh.

7. The investigation has revealed that both the brother and sister are contesting the Title Suit No. 32 of 2022 and 821 of 2013 and even before the decision in the title suit the flat was given on rent to Anup Kumar and the same and one Flat was given to the petitioner by Reshma Kumari and this petitioner is said to have entered into the premises. During investigation, the allegation of the petitioner that some files were thrown and some files were taken away and name plate was removed and damaged and the petitioner was abused and threatened has been found to be true, however, the allegation with respect to snatching of gold chain and threatening by putting a pistol has not been found to be true. No injury report was produced by the petitioner. According to the counter, so far the case has been found true under Section 341, 380, 504, 506, 427 and 34 of the Indian Penal Code against three named accused i.e. Rahul Ramagoswami, Ravi Bhushan and Anil Kumar Singh as well as against 2-3 unknown accused persons.

8. Learned counsel for the petitioner has further drawn the attention of this Court towards the supplementary



counter affidavit of respondent no. 4. It is stated that in paragraphs '7', '8', '9' and '10' the facts which have transpired in course of investigation are mentioned. It is stated that in course of inquiry, it was found that there was a grill in front of the entry gate of Flat No. 103 and there were three locks imposed in the grill. On asking the petitioner told that he has imposed two locks one from inside the grill and one outside the grill and the keys of the aforesaid two locks are lying with him. The Dy.S.P., Law and Order, Patna has submitted an inquiry report to Senior Superintendent of Police, Patna with a finding that authorities of Patliputra Police Station have neither locked the door of the flat nor any keys are lying with the authorities of Patliputra Police Station. One lock has been imposed by Anup Kumar.

9. Mr. Sanjay Singh, learned Senior Counsel for the respondent no. 5 has opposed this writ application. It is submitted that the petitioner in this case is a lawyer who represents Reshma Kumari. Reshma Kumari has filed a title suit for her share in the properties. Her father has executed a Will in favour of his son Rahul Ramaswami and he has filed a probate case for probate of the said Will which is pending in the learned court below.



10. The Investigating Officer of the case (respondent no. 5) has also filed a counter affidavit in which it is stated that he is the Investigating Officer of Patliputra P.S. Case No. 178 of 2022 which was lodged by Mr. Anshuman who is the husband of Ms. Reshma Kumari against Rahul Ramaswami, Mr. Anil Kumar, Mr. Ravi Raushan, Mr. Ravindra Kumar and same persons have been made accused in Patliputra P.S. Case No. 310 of 2022. During investigation of the Case No. 178 of 2022, it was found that the real bone of contentions are relating to ownership, title and possession of the self-acquired and ancestral properties of late Saryug Prasad Singh for which a Title Partition Suit no. 821 of 2013 is pending adjudication before the learned Sub-Judge-1, at the instance of Ms. Reshma Kumari against her father, her mother and the developer Badal Construction Private Limited. Learned Senior counsel relies on the Hon'ble Apex Court judgment in the case of **Roshina T. Vs. Abdul Azeez K. T. and Ors.** reported in **(2019) 2 SCC 329** (para 6).

11. In this case, Rahul Ramaswami, respondent no. 7 who is the son of late Saryug Prasad Singh has also filed a counter affidavit who has stated that his father was the owner and in possession of the different properties which were his self-acquired as well as ancestral properties. It is stated that for the property in question his father entered into a registered development agreement dated 10.09.2010 (Annexure '5' to the



writ application) with M/s Badal Construction Private Limited with respect to the development of 51 decimal of land which was his self-acquired as well as ancestral property on which the Flat No. 103 is situated at Mauza-Mainpura, P.S.-Patliputra, District-Patna. His father learnt that Ms. Reshma Kumari on the basis of a forged and fabricated document of partition got her name mutated in the Revenue records of the State vide Annexure 'R-7/A' then he challenged the same before the Deputy Collector Land Reforms. The Deputy Collector Land Reforms set aside the order passed in mutation case. It is stated that Saryug Prasad Singh further instituted an FIR against his daughter Reshma Kumari, her husband and others vide Pirbhahore P.S. Case No. 154 of 2011 registered under Section 420/467, 468 and 471 of the Indian Penal Code alleging that she along with her husband and others in conspiracy with each other prepared a forged and fabricated document of the partition and put his and his son's forged signature and presented the same before the State authorities for purpose of mutation in her name. It is stated that after her unsuccessful attempt before the Revenue Court, she filed partition suit against her father, brother and the developer being Title Partition Suit No. 648 of 2011 before the learned Sub-Judge-I, Patna. Subsequently, she



withdrew the said suit and again filed a partition suit being Title Partition Suit No. 821 of 2013 alleging therein that she is the sole child of her parents and because her father has illegally and mischievously entered into development agreement with some of the joint family properties without her consent and knowledge, hence the partition suit has been filed. She has prayed for a preliminary decree of partition with respect to her half share and also prayed for carving out her separate takhta and then she be put in possession thereof. A copy of the plaint of the Title Partition Suit No. 821 of 2013 has been brought on record as Annexure 'R/7-E' to the writ application.

12. On perusal of the plaint, it appears that one of the reliefs prayed in the suit is that the plaintiff be put in possession of the property through the process of court. The suit property described in the plaint are the properties situated in Mauza-Mainpura, thana No. 2, Patliputra Police Station, District-Patna, the property situated in Mauza- Beur, thana No. 38, P.S.-Beur, District-Patna and the property situated in Mauza-Dujra, Thana No. 4, P.S. Buddha Colony, District-Patna.

13. In the said suit Shri Saryug Prasad Singh has been made defendant no. 1 and Annexure 'R/7-F' is his written statement wherein he has claimed that the plaintiff has



concealed the truth and wrongly included the separate properties of the defendant no. 1 which was gifted to him by his grandmother vide registered deed of gift dated 19.12.1973. He has stated that the property in Tauzi No. 2 to 5, Khata No. 113, Plot No. 178 area 3.9 katha in Mauza-Dujra, P.S.-Buddha Colony, District-Patna are self-acquired property of defendant no. 1 either in his own name or in the name of his son and these properties have been wrongly included in the present suit.

14. Respondent no. 7 has stated that during his lifetime, his father has taken physical possession of few flats of Badal Kutir from the developer and this flat is one of them. He had entered into a lease agreement of Flat No. 103 with one Anup Kumar and he was put in possession of the flat.

15. Having heard learned counsel for the parties and on perusal of the records, this Court finds that with regard to the property in dispute, a title suit is pending at the instance of the vendor of this petitioner. In the said title suit, she has inter-alia prayed for putting her in possession of the properties after adjudication of her share and takhtabandi of the property. The said suit is still pending.

16. This petitioner is said to be a lawyer of the plaintiff Reshma Kumari and he is well-aware of the nature of the plaint



and the reliefs prayed therein. The petitioner claims his possession over the flat in question through Reshma Kumari who is the plaintiff of the title suit. Her share in the suit property is still a subject matter of adjudication before the competent civil court.

17. In these circumstances, the claim of the petitioner that he entered into an agreement with Reshma in respect of the flat in question which was in here share and thereafter got possession of the flat in question would not inspire confidence of this Court. There is a serious disputes between the brother and the sister and this dispute exists right from the lifetime of the father who had entered into the development agreement for construction of apartment in question with the developer.

18. It is one of those cases in which this Court cannot instantly come to a conclusion that a person in lawful possession of the property has been ousted by someone taking law into his hand.

19. This Court would not like to go into much discussions on the merit of the claims of the parties. Reshma is not a party in this case either as petitioner or respondent. This Court would, thus, observe that all discussions and observations of this Court shall not be taken as any opinion of this Court on



the issues pending adjudication in the suits or any other civil or criminal proceeding.

20. In the nature of the disputes between the parties and the materials present on the record, this Court is of the considered opinion that it is not a fit case in which the extraordinary writ jurisdiction under Article 226 of the Constitution of India be exercised.

21. The petitioner may seek his remedy, as may be advised to him, before a competent court in appropriate jurisdiction.

22. This writ application is, thus, disposed of with liberty as hereinabove.

23. Learned counsel for the petitioner shall remove all the S.R. defect(s), if any, within four weeks from today and the certified copy of this order shall be made available only after removal of the defect(s), if any.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	28.09.2022
Uploading Date	02.10.2022
Transmission Date	02.10.2022

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

