

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.388 of 2021

Uday Prakash Mishra, Son of Late Ram Bilas Mishra, Resident of Sheohar
Ward No. 14, P.S.-Sheohar, District-Sheohar.

... .. Petitioner/s

Versus

1. Punam Mishra alias Punam, W/o Prem Prakash Mishra, resident of Mohalla-Kabutari Gali, P.S.-Tripolia, District-Patna.
2. Nilam Kumari alias Kumari Nilam, W/o Anantchari Mishra, resident of House No. 405, Pitambar Nagar, P.S.-Rai Bareli, District-Unnao, Uttar Pradesh.
3. Basanti Mishra alias Kumari Basanti, W/o Ramji Mishra, resident of Village Ketaki, Post Ketaki, District-Aurangabad.
4. Radha Rani alias Kumari Radha Rani, W/o Madhukar Mishra, resident of Village Raghobpur, P.S.-Bihta, District-Patna.
5. Om Prakash Mishra, Son of Late Ram Bilas Mishra, Resident of Sheohar Ward No. 14, P.S.-Sheohar, District-Sheohar.
6. Jay Prakash Mishra, Son of Late Ram Bilas Mishra, Resident of Sheohar Ward No. 14, P.S.-Sheohar, District-Sheohar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Singh Mr. Sanjeev Kumar Singh
For the Respondent no.6		Mr. Jitendra Kishore Verma Mr. Devendra Kumar

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

5 22-06-2022 Learned counsel for the petitioner is directed to
remove all the defects pointed out by the Stamp Reporter within
one month.

I have already heard the parties.

The learned first appellate court, vide impugned
order dated 02.08.2021, dismissed Misc. Appeal No. 01 of 2021



concurring with the order of the learned Sub Judge-II, Sheohar dated 27.01.2021 passed in Misc Case No. 65 of 1993, whereby he has rejected the petition filed on behalf of the petitioner under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, hereinafter to be referred to as 'the Code'.

The brief facts of the case are that respondent no.5 filed Partition Suit No. 37 of 1972/21/1973 against the petitioner and his father claiming 1/5th share in the property. The said partition suit was decided on the basis of compromise dated 10.07.1973. The decree passed and prepared on the same day i.e. on 10.07.1973 on the basis of compromise. Schedule-IV property was given to the petitioner. On 02.07. 1979, respondent no.6 filed an amendment petition for amendment of that decree, which was dismissed on 02.11.1979. Respondent no.6 preferred Civil Revision No. 40 of 1980 before this Court, that was allowed, vide order dated 11.07.1980. In pursuance of the order of revisional court dated 11.07.1980, the decree was amended and the property allotted to the petitioner was given to respondent no.6. Being aggrieved, the petitioner fled Title Suit No. 53 of 1980. The question of maintainability was raised by the defendants. The learned trial court held the Title Suit No. 53 of 1980 as maintainable, vide order dated 12.01.1979. Against



that order, father of the petitioner preferred Civil Revision No. 375 of 1989 before this Court. The revision was allowed vide order dated 28.09.1992, against which the petitioner preferred SLP No. 15016 of 1993 before Hon'ble the Supreme Court which was withdrawn with liberty to move before appropriate court. Then the petitioner filed Misc Case No. 65 of 1993 before the Sub-Judge-II, Sheohar for declaring the mendment as void. During the pendency of Civil Misc. Case No. 65 of 1993, an injunction petition was filed by the petitioner. Vide order dated 03.08.2015, both the parties were restrained from alienating the property in dispute for a period of only one month. Subsequently, that order was recalled vide order dated 23.09.2015 on the application filed by respondent no.6 that he never filed rejoinder nor he made no objection in granting the status quo.

It is pertinent to mention here that during the pendency of Civil Misc No. 65 of 1993, the learned Sub Judge-II, where the matter was pending, made a reference before this Court under Section 113 of the Code, which was registered as Civil Reference Case No 01 of 2017 and after hearing both the parties, this Court disposed of that reference case, vide order dated 03.03.2020, directing the learned court below to dispose



of miscellaneous case within three months. Thereafter an injunction petition dated 06.11.2020 was filed by the petitioner under Order XXXIX, Rules 1 and 2 of the Code with a prayer to restrain respondent no. 6 from alienating the land in dispute which was allotted to the petitioner, vide compromise decree dated 10.07.1973. The learned trial court as well as the learned first appellate court rejected the prayer of the petitioner, as such this civil miscellaneous petition has been preferred.

The learned counsel for the petitioner has submitted that the compromise decree dated 10.07.1973 was amended pursuant to the order dated 11.07.1980 passed in Civil Revision No. 40 of 1980. The petitioner was not given opportunity of hearing either at the time of passing of the order dated 11.07.1980 or at the time of amendment of the decree. The amendment petition was filed fraudulently after obtaining consent of different advocates engaged by the petitioner and decree was amended vide order dated 04.10.1980.

The plea of respondent no.6 is that the amendment petition was allowed by the revisional court in Civil Revision No. 40 of 1980 as the defendants had no objection to the amendment. In pursuance of that order, the property described in Schedule-IV of compromise petition was given to respondent



no.6. That order of the revisional court has become final, as the SLP was withdrawn by the petitioner. Respondent no.6 is the rightful owner and title holder of the property, described in Schedule-IV of the compromise petition. The *prima facie* case is in his favour as well as the balance of convenience, as such the learned courts below did not commit any illegality or jurisdictional error in refusing the injunction concurrently.

The learned counsel for the petitioner has submitted further that respondent no.6 started selling the land. Sale deeds executed by respondent no.6 were filed, but ignoring this fact the learned trial court has mentioned in its order that no document has been filed by the petitioner.

The learned first appellate court has taken notice of this fact in paragraph 8 of its order maintaining that the entire sale deeds executed by respondent no.6 have been enumerated. Thereafter, after discussing the entire facts, the learned first appellate court came to the conclusion that the order dated 11.07.1980 in Civil Revision No. 40 of 1980 is final as it was though challenged in SLP before the Hon'ble Supreme Court, but subsequently it was withdrawn by the petitioner. It is true that after withdrawing the SLP, the petitioner has filed Civil Misc. No. 65 of 1993, but merely filing of the Misc. Case No.



65 of 1993 does not create *prima facie* case in favour of the petitioner, nor balance of convenience leans in his favour. Per contra, the order of the revisional court is existing in favour of respondent no.6.

In the above mentioned facts and circumstances, I do not find any illegality or jurisdictional error in the impugned order.

The learned trial court was directed by this Court in Civil Reference Case No. 01 of 2017 to decide and dispose of the matter within a period of three months, but the matter is still pending.

The learned court below is directed to comply with the order of this Court passed in Civil Reference Case No. 01 of 2017 in its letter and spirit and dispose of Misc. Case No 65 of 1993, as early as possible. The date shall not be fixed for a period of more than seven days unless unavoidable circumstances arise. It is hereby made clear that the observation given in this order shall not affect merit of the case.

With these observations, this civil miscellaneous application is disposed of.

Office shall ensure that all the defects are removed by the petitioner within the stipulated time provided hereinabove,



failing which the matter shall be brought to the notice of this
Court.

(Nawneet Kumar Pandey, J)

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