

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.81 of 2018

- 1.1. Chhathu Kumar, Son of Late Triveni Sah, Resident of Village- Maharaj ganj, Tole- Lawkushpur, P.O.- Goldinganj, P.S.- Chapra Mufassil, District- Saran.
- 1.2. Mithu Kumar, Son of Late Triveni Sah, Resident of Village- Maharaj ganj, Tole- Lawkushpur, P.O.- Goldinganj, P.S.- Chapra Mufassil, District- Saran.
- 1.3. Guddu Kumar, Son of Late Triveni Sah, Resident of Village- Maharaj ganj, Tole- Lawkushpur, P.O.- Goldinganj, P.S.- Chapra Mufassil, District- Saran.
- 1.4. Ganesh Kumar, Son of Late Triveni Sah, Resident of Village- Maharaj ganj, Tole- Lawkushpur, P.O.- Goldinganj, P.S.- Chapra Mufassil, District- Saran.
- 1.5. Prem Kumar, Son of Late Triveni Sah, Resident of Village- Maharaj ganj, Tole- Lawkushpur, P.O.- Goldinganj, P.S.- Chapra Mufassil, District- Saran.
- 1.6. Rina Kumari, Daughter of Late Triveni Sah, Resident of Village- Maharaj ganj, Tole- Lawkushpur, P.O.- Goldinganj, P.S.- Chapra Mufassil, District- Saran.
2. Triguna Sah @ Triguna Prasad Sah, Son of Late Samika Sah, Resident of Village- Maharajganj, Tole Lawkushpur, P.O.- Goldinganj, P.S.- Chapra Mufassil, District- Saran.

... .. Petitioner/s

Versus

1. Kanhaiya Lal Sah, Son of Late Ram Nagina Sah, Resident of Village- Lawkushpur, P.O.- Goldinganj, P.S.- Chapra Mufassil, District- Saran.
2. Sharawan Kumar, Son of Jaglal Sah, Resident of Village- Lawkushpur, P.O.- Goldinganj, P.S.- Chapra Mufassil, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nagendra Rai, Advocate
For the Respondent/s	:	Mr. Dineshwar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 22-08-2023



Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 31.07.2017 passed by the learned Additional District Judge -X, Chapra in Miscellaneous Appeal No. 18 of 2016 by which Miscellaneous Appeal has been dismissed and order of trial court dated 14.03.2017 passed in T.S. No. 145 of 2013 has been confirmed in which prayer of injunction by plaintiff/petitioners have been refused.

3. The brief facts of the case are that plaintiffs/petitioners filed Title Suit No. 451 of 2012 for permanent injunction against defendants/ respondents from forcibly taking possession or making any structure on suit land which is northern 6 *dhur* portion of Plot No. 1289. Plaintiffs claim to use the suit land as Rasta for going over main road north of their house claiming that it is their ancestral land. Defendants claimed to have purchased the suit land from Lakhrajo Devi daughter of Jagannath Sah and threatening to take possession of the same and obstruct the Rasta of plaintiffs and other *pattidars* by making various structure. The plaintiffs/petitioners filed an injunction petition on 18.02.2014 under Order 39 Rule 1 and 2 and under 151 CPC which was dismissed vide order dated



14.03.2016. The petitioners preferred Miscellaneous Appeal No. 18 of 2016 which was also dismissed by impugned order dated 31.07.2017.

4. Learned counsel for the petitioners submits that there is no partition by metes and bounds, a transfer from a co-owner cannot come in a joint possession and he can come in possession only after a decree in court partition and delivery of possession. He further submits that petitioner go over to main road north of the plot through the northern portion of the plot and this is the only way for the plaintiffs for coming from and going to the road and defendants are trying to make construction in the disputed land and obstructing *rasta* of the plaintiffs/petitioners and their other *pattidars*. The Advocate Commissioner in his report dated 23.10.2013 supported the contention of the petitioner, however, another Advocate Commissioner reported about another road also.

5. *Per contra*, learned counsel for the respondents submits that Lakhrajo Devi filed a partition suit No. 159 of 1998 against the petitioner. Lakhrajo Devi sold away her 6 *dhurs* of share in disputed plot no. 1289 by way of registered sale deed dated 22.05.2012 in favour of respondents for appropriate consideration and respondents acquired full right, title, interest



and possession over their purchased land from the date of execution of the sale deed. The petitioner has not arrayed Lakhrajo Devi as party nor sought any relief against the registered sale deed dated 22.05.2012 and filed suit simplicitor for permanent injunction against the respondent accordingly the injunction petition was rightly rejected by the learned courts below. He has submitted that petitioners have no *prima facie* case, balance of convenience is also not in their favour and they will not suffer irreparable loss and injury if injunction is not granted.

6. It is further submitted that petitioners and other heirs of Banarsi Sah have got their house (facing east) and *Sahan* etc. over plot no. 1293, 1294 and 1295 and they use the *gali* from east to go to main road which is also evident from the report of the Advocate Commissioner. He has further submitted that the petitioners want to get final relief, which is not permissible under the law. Further, it is submitted that the petitioners have also accepted the title and share of the vendor of respondents i.e. Lakhrajo Devi and have purchased her $\frac{1}{4}$ share in other land vide registered sale deed dated 09.10.2020.

7. The Division Bench of this Court in **Brij Mohan Singh Vs. Krishna Shahi 2007 (1) PLJR 565** observed that



“Basically, a Civil Court is a court of equity and specially injunction is an equitable relief and hence while passing any such order, the prime consideration for such a court has to be equity, except in cases where there is any specific law or any specific bar against passing of such an order. Hence, it is for the Court to decide such question with respect to injunction on the basis of principles of equity and justice. Considering these two points of equity and justice, the law has been settled that there should be three ingredients for passing or refusing any order of injunction, which are prima facie case, balance of convenience and irreparable loss and if any of them is absent, no such order allowing prayer for injunction can be passed as has been held in a catena of decisions by the Hon’ble Apex Court as well as by the various High Courts, including this Court.

8. This Court in **Kumar Bimal Prasad Singh vs. Hare Ram Singh 2020 (2) PLJR 899** held that “It is well settled proposition of law that if a lis has been admitted for adjudication then it becomes the duty of the court to preserve the subject matter of the litigation by an appropriate order so that same is available at the time of final adjudication and decree does not become a barren one.

9. In **Jagannath Prasad Sinha @ Jagarnath**



Prasad Singh Vs.Pinky Chaudhary 2013 (2) PLJR 695 this Court observed that “So long the sale deeds in question are in existence, the same will be deemed as legal and valid, and as such, the court, is of the opinion that learned Sub-Judge has rightly rejected the petitions filed by the plaintiff / appellant, which requires no interference.”

10. In the case of **Esha Ekta Apartments Ltd. Vs. Municipal Corporation of Mumbai (2021) 4 SCC 689**, the Hon’ble Supreme Court considered the scope of interference by the Appellate Court in interim order passed by the Court at the first instance. The Appellate Court’s power to interfere with the interim order passed by the court of first instance has been considered by the Hon’ble Apex Court in several cases.

11. The Apex Court in **Wander Ltd. Vs. Antox India (P) Ltd. 1990 Supp SCC 727** had the occasion to consider the principles regarding grants of injunction wherein the Apex Court made the observation that in such appeals, the Appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant



or refusal of interlocutory injunctions. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that Appellate Court would have been taken a different view may not justify interference with the Trial Court's exercise of discretion. This case was referred in **Skyline Education Institute (India) Pvt. Ltd. Vs. S.L. Vaswani (2010) 2 SCC 142**, wherein the three Judge Bench of Hon'ble Supreme Court observed that:

“ The ratio of the abovenoted Judgment is that once the Court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the Appellate Court will be loath to interfere simply because on a *de novo* consideration of the matter it is possible opinion on the issues of *prima facie* case, balance of convenience, irreparable injury and equity.”

12. In **Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors. reported in (1992) 1 SCC 719**, the Hon'ble Supreme Court has held that Rule 1 primarily concerned with the preservation of property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is



required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the Court, on exercise of power of granting ad interim injunction, is to preserve the subject matter of the suit in the *status quo* for the time being. Grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that (1) there is serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/ defendants, (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

13. The Hon'ble Apex Court further held that there should be *prima facie* case in favour of applicants which needs adjudication at the trial. The existence of the *prima facie* right and infraction of the enjoyment of his property or right is a condition for the grant of temporary injunction. *Prima Facie* case is not to be confused with *prima facie* title which has to be



established, on evidence at the trial.

14. This Court in **Dular Chand Sah & Ors. vs. Devnath Sah & Ors.** reported in MANU/BH/0794/2015 observed as follows:-

“The person who is seeking injunction has to satisfy the Court three ingredients, namely, *prima facie* case, balance of convenience and irreparable loss. If any of the ingredients is missing the Court would refuse to grant injunction. Satisfaction of *prima facie* case by itself is not sufficient to grant injunction. The Court has to satisfy itself that non-interference by the Court would result in irreparable injury to the party seeking relief and there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one, namely, one that cannot be adequately compensated in terms of money. Even where *prima facie* case is made out in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable...”.



15. The learned trial court observed that plaintiffs have accepted that the Khatiyani of Schedule -I property is in the name of Banarsi Sah whose son was Jagannath Sah and Lakhrajo Devi is his daughter and her share in the property cannot be denied and she sold Schedule property -II (6 dhur) to defendants. The nature of Schedule property- II shall be decided in final judgment and being purchased property, it is not in the interest of justice to stop the use of the same by defendants. The learned trial court held that plaintiffs / petitioners have no *prima facie* case and balance of convenience is also not in favour of the petitioners and there shall be no irreparable loss cause to the plaintiffs, if the temporary injunction is not granted. Accordingly, the learned trial Court dismissed the petition of the petitioners for temporary injunction by reasoned order which has been confirmed by the Appellate Court below.

16. Considering the facts and circumstances of the case and the legal provisions for grant of temporary injunction as stated above, in view of this Court, the impugned order is reasoned order passed in its jurisdiction having no illegality.

17. Since the orders passed by the courts below are neither without jurisdiction nor any illegality can be found in it, the same does not warrant any interference by this Court in its



supervisory jurisdiction.

16. Accordingly, this Civil Miscellaneous Application is dismissed.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	AFR
CAV DATE	18.08.2023
Uploading Date	22.08.2023
Transmission Date	

