

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.110 of 2021

1. Shailendra Singh, son of Ram Shohawan Singh, resident of Village Harnaut, (Cheron Bazar), P.S. Harnaut, District- Nalanda.
2. Sunil Singh, son of Ram Shohawan Singh, resident of Village Harnaut, (Cheron Bazar), P.S. Harnaut, District- Nalanda.
3. Santosh Kumar, son of Shailendra Singh, resident of Village Harnaut, (Cheron Bazar), P.S. Harnaut, District- Nalanda.
4. Shashi Kumar, son of Shailendra Singh, resident of Village Harnaut, (Cheron Bazar), P.S. Harnaut, District- Nalanda.
5. Sonu Kumar, son of Sunil Singh, resident of Village Harnaut, (Cheron Bazar), P.S. Harnaut, District- Nalanda.
6. Monu Kumar, son of Sunil Singh, resident of Village Harnaut, (Cheron Bazar), P.S. Harnaut, District- Nalanda.
7. Samanti Devi, daughter of Ram Shohawan Singh, wife of Ishwar Chand, resident of Danapur near by Office of Agnisamaak, P.S. Danapur, District- Patna.

... .. Petitioner/s

Versus

1. Ram Rekha Devi, w/o Mohan Singh, resident of Village Kharuyara, P.O. Chero, P.S. Harnaut, District-Nalanda.
2. Ram Shohawan Singh, s/o Late Hazari Singh, resident of Village Harnaut (Cheran Bazar), P.S. Harnaut, District-Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Pankaj Kumar, Advocate
For the Respondent/s	:	Ms Chaya Kirti, Advocate
		Mr. Randhir Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

3 09-02-2023 Heard learned counsel for the parties.

This application under Article 227 of the Constitution of India has been filed against the order dated 25.10.2019 passed in Misc Case No. 01 of 2014 by learned 4th Addl. District Judge, Nalanda at Biharsharif whereby and whereunder the learned Court below has confirmed the order dated 10.01.2014



passed by learned Munsif, Nalanda at Bihar Sharif by which he dismissed the application filed by the petitioner under Order 39 Rule 1 and 2 of C.P.C.

The petitioners are plaintiffs in Trial Court who have filed suit for partition bearing Title Suit No. 54 / 2013, inter alia, for declaration that plaintiff have 75% share over the suit property and defendant no. 2 Ram Shohawan Singh had only 25% share accordingly the sale deed executed by him with respect to suit land is null and void and also to stay the execution of order dated 16.08.2013 passed by D.C.L.R. till final disposal of the suit. The plaintiff filed an application under Order 39 Rule 1 and 2 of C.P.C. in the suit seeking ad-interim injunction against defendant over the suit property because the D.C.L.R. had directed the Anchal Adhikari (C.O.) to demolish the house with the help of police after expiry of one month. The said application has been dismissed vide order dated 10.01.2014 by the learned Munsif, Nalanda at Bihar Sharif. The appeal filed by the petitioner bearing Miscellaneous Appeal No. 01 / 2014 also dismissed by learned 4th Additional District Judge, Bihar Sharif at Nalanda vide the impugned order dated 25.10.2019.

Learned counsel for the petitioner submits that the impugned order has been passed without considering that



balance of convenience is in favour of the plaintiffs/petitioners as they are coming in possession over the suit property and two purchaser / defendants 1st set have never come in possession over the suit property.

Learned counsel for the respondents submits that learned Trial Court as well as the Appellate Court have considered that the residence of plaintiff is on other plot and there is no permanent structure on the disputed land and only some pole, garbage etc. are kept thereon and the plaintiffs have no prima facie case in their favour and balance of convenience is also not in favour of plaintiffs and no irreparable loss would be caused to plaintiffs if no interim injunction has been passed.

On perusal of impugned order it appears that the trial Court observed that the sale deed dated 25.05.1971 was executed by defendant no. 2 for himself and on behalf of his two minor sons for fulfillment of his legal requirement which is valid and on perusal of the order of D.C.L.R. it appears that he himself visited / inspected the disputed land and found temporary construction done about 7 to 8 months which is not legal and directed to remove the same.

Grant of interlocutory injunction during pendency of a lis is a matter of judicial discretion and when such discretion is



exercised upon proper appreciation of facts and application of true principles of law applicable on the issue, it would be a sound exercise of judicial discretion. In exercise of such discretion, tests to be applied are as follows:-

(i) whether the plaintiff has a prima facie case in his favour?

(ii) Whether balance of convenience is tilted in favour of the plaintiff?

(iii) Whether plaintiff would suffer irreparable injury, which cannot be compensated in terms of money, if prayer for temporary injunction is disallowed.

To decide the question as to whether plaintiff has prima facie case in his favour, Court shall first see whether plaintiff has raised any substantial question which needs investigation and decision on merits, i.e. whether he has raised some question to go into the trial. Court may consider probability of his success in the trial and the comparative strength of the cases of the respective parties before it. The Court may also ascertain as to whether the suit shall fail on technical ground but it is not necessary for the plaintiff to prove his case to the hilt and if a fair question is raised for determination, it should be taken that a prima facie case has



been established.

Plaintiff must establish that his inconvenience, in the event the relief of temporary injunction is denied to him well, in all events, exceed that of the defendant in case he is restrained.

The term 'irreparable injury' means substantial injury which cannot be adequately remedied or compensated by way of damages and the Court shall consider whether protection is necessary from the species of injuries known as 'irreparable' before his legal right can be established. Court shall consider whether the mischief or inconvenience likely to arise from withholding injunction will be greater than which is likely to arise if granted. At this stage of deciding the application for temporary injunction, the Court is not required to go into the merits of the case in detail.

In the present case, the Courts below held that no prima facie case is made out in favour of the plaintiff and also balance of convenience is not in favour of the plaintiff and also the plaintiff would not suffer irreparable injury, which can not be compensated in terms of money, if prayer for temporary injunction is disallowed. The reasons have been assigned in detailed. The learned Court below considered the facts and circumstances of the case. The reasons given by the learned



Court below are sound reasons.

In view of the aforesaid facts and law discussed above, it cannot be said that there is any illegality or material irregularity has committed by the learned Court below in passing the impugned order. I am of the considered view that no interference is required in the impugned order under Article 227 of the constitution and as such, the present application, being devoid of any merit, is hereby dismissed.

(Sunil Dutta Mishra, J)

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