

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.393 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

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1. Tribhuwan Singh Son of Late Haridwar Singh Resident of Bashitha Colony, Harni Chak, Post - Phulwari Sharif, P.S.- Phulwari Sharif, District - Patna (Bihar), Pin Code - 800002.
 2. Smt. Sumita Devi Wife of Tribhuwan Singh Resident of Bashitha Colony, Harni Chak, Post - Phulwari Sharif, P.S.- Phulwari Sharif, District - Patna (Bihar), Pin Code – 800002.

... .. Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Patna, Bihar.
2. The District Magistrate, Patna, Bihar.
3. The Senior Superintendent of Police, Patna.
4. The Sub-Divisional Magistrate, Danapur, Patna.
5. The S.H.O., Phulwari Sharif, Patna (Bihar).
6. Ekta Prakash Wife of Nagmani Pintu Resident of Harnichak, P.O. and P.S.- Phulwari, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Sr. Adv. With
	:	Mr. Manish Kumar Singh, Adv.
	:	Mr. Akrity Aishwarya, Adv.
For the Respondent/s	:	Mr. Prabhat Kumar Verma, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 28-04-2023

Heard learned counsel for the petitioners, learned

A.P.P. for the State and counsel for private respondent no.6.

Pleadings have been completed in every aspect of
all the parties.

The present application has been filed for
directing / commanding the respondent authorities not to
interfere in the possession of the petitioners in the flats and

building situated on the plot no.61, Khata No. 28, Total Area 3.9062 dec. on the ground that petitioners are rightful owner of the building and they are not party in the case under Domestic Violence Act. In addition to that petitioners have also prayed for demanding adequate compensation from the persons who have been responsible for forceful eviction of the petitioners from their purchased house.

Counsel for petitioner submits that in his supplementary affidavit, it has been categorically mentioned that the petitioners are purchaser of building on 08.08.2019 including the land by virtue of registered sale deed and got mutated in their favour. Counsel further submits that after purchasing of the said building from their vendors, namely, Manorama Devi and Baby Devi, they started residing in their own purchased house. Counsel submits that the petitioners are the absolute owner of the said property and by virtue of title holder, they are in possession and their possession was disturbed in the garb of an order passed in Domestic Violence Act vide order dated 29.09.2020 passed in D.V. Case No.39 of 2019 (Ekta Prakash Vs. Nagmani Pintu and Ors). Counsel submits that the date of purchase of house is 08.08.2019. He submits that as per law since 08.08.2019, the title of the said house came in

favour of petitioners but by virtue of order dated 29.09.2020 in D.V. Case No. 39 of 2019 in which petitioners were not party and they were evicted and their flats were locked. It has been stated that the said order passed in D.V. Case No. 39 of 2019 cannot be executed against them and it is bad in law.

Counsel further submits that there is a Title Partition Suit no. 246 of 2019 has been filed from its filing date, it became clear at the time of purchase that no case was pending with regard to the said building. Counsel submits that respondent no.6 of the present writ petition is daughter-in-law of Manorama Devi, wife of Madan Kumar @ Madan Singh who is the vendor of the petitioners. Counsel submits that the said respondent no.6 is not even a coparcener in the joint family and has got no right to institute a partition suit even regarding the joint family property in the right time of her husband.

Counsel further submits that respondent no.6 in the Title Partition Suit no. 246 of 2019, has pleaded that 3 floors out of 4 floors were in the possession of the petitioners and respondent no.6 was residing on the some portion of first floor with permission of the petitioners for temporary period which was allowed on the humanitarian ground, till she arranged elsewhere. Counsel for petitioner also submits that upon

purchase mutation of the said land was made in favour of the petitioners which was subsequently, cancelled but name of respondent no.6 was not recorded in *Jamabandi*. As such on the ground of cancellation of sale deed, benefit cannot be given to the respondent no.6. according to him. It is due to the reason that the entry in the revenue records neither create nor extinguish any title.

Counsel submits that in the above facts and circumstances, the action taken by police about illegal and forceful removal from their own house is bad in law and therefore, they have preferred the present writ petition being very old aged person.

On the other hand, respondent no.6 has filed her pleading and submits that she has filed an I.A petition seeking relief of recalling of the order dated 24.03.2023 passed by this Court by which the Senior Superintendent of Police, Patna as well as the District Magistrate, Patna were directed to restore the possession of the petitioners in one flat situated on the ground floor of the building and get the writ petitioners evicted from matrimonial house of the respondent no.6.

Since final arguments is going on today itself, there is no need of passing a separate order on interlocutory

application filed by the respondent no.6.

Counsel further submits that in the counter-affidavit, she has categorically mentioned that the present writ petition is not maintainable as the petitioners have not come before this Court with clean hands and therefore, on his preliminary objection itself, this writ petition is fit to be dismissed. Counsel submits that the marriage of the respondent no.6 was solemnized with the son of one of the vendors of petitioners on 28.02.2011 and since then, she was residing in the matrimonial house along with her husband, mother-in-law, father-in-law with her children.

Counsel further submits that respondent no.6 on the ground of matrimonial problems, filed a case under Domestic Violence Act, 2015 numbered as D.V. Case No. 39 of 2019. She has also filed a title partition suit which is pending before Court of Sub-Judge-I , Patna through her children which is numbered as Title Suit No.246 of 2019 which is presently transferred from the Court of Sub-Judge-I, Patna to Sub-Judge-II, Patna.

Counsel submits that the property in question was the joint family property but it was in the name of mother-in-law namely, Smt. Manorama Devi and cousin mother-in-law namely, Smt. Baby Devi. They have sold this property without partition

with a view to harass and frustrate the cause of action of answering respondent no.6, by virtue of registered sale deed dated 08.08.2019 which is also the subject matter of the title partition suit.

Counsel further submits that in the D.V. Act 39 of 2019, respondent no.6 filed an application for breaking of lock, restoration of water, electricity supply in her matrimonial house in which order was passed in her favour on 24.02.2020. Counsel submits that the writ petitioners filed application for stay of order dated 24.02.2020 in D.V. Case No. 39 of 2019 which was considered and rejected vide order dated 29.09.2020. Thereafter, the petitioners have preferred a criminal appeal no.57 of 2020 against the order dated 29.09.2020 passed in D.V. Case No. 39 of 2019 before the learned District Judge, Patna and the said appeal was also dismissed vide order dated 22.02.2021 and order dated 29.09.2020 passed in D.V. Case No. 39 of 2019 was affirmed.

Counsel for respondent no.6 further submits that thereafter, the writ petitioners have filed an application under order 39 Rule 1 & 2 CPC in the Title Suit No. 246 of 2019 for grant of injunction. The said injunction order was also dismissed on 18.06.2022. Counsel submits that petitioners have filed

application for cancellation of mutation bearing Appeal No. 38 of 2019-20 in the Court of DCLR, Patna Sadar which was allowed in their favour and mutation in favour of petitioners was cancelled vide order dated 23.02.2021. Counsel submits that writ petitioners have already exhausted the above said remedy but not place the entire matter before this Hon'ble Court and by suppressing the same, they have obtained the order dated 24.03.2023 in their favour. In this background, counsel for petitioners submits that the writ petition may be dismissed.

After going through the pleadings and documents of the parties and upon arguments, there are certain things which have been admitted by both the parties that the house in question, was sold by Manorama Devi and Baby Devi on 08.08.2019 in favour of the petitioners. It was also within the knowledge of both the parties that a Title Partition Suit No. 246 of 2019 has been filed on 24.09.2019 in which the alleged sale deed is also the subject matter. It was also known to the parties that the protection order passed on 22.09.2019 in D.V. Case No.39 of 2019 and Title Suit No. 246 of 2019 filed on 24.09.2019 meaning thereby, prior to filing of title suit protection order come. But on 22.02.2021, order passed in D.V. Appeal No.57 of 2020 meaning thereby, after filing of the title

partition suit. Both the parties admit that it was the joint property of Manorama Devi and Baby Devi and their family.

It has also admitted that the petitioners have challenged the said protection on 24.02.2020 but vide order dated 29.09.2020 in D.V. Case No.39 of 2019 their application rejected and order has been affirmed in D.V. Appeal No.57 of 2020 vide order dated 22.02.2021. Thereafter, they have not availed the remedy against the same and the said order passed in D.V. Act has acquired finality. The petitioners have also preferred injunction petition in the title suit as they were also parties to the title suit and their injunction petition under Order 39 Rule 1 & 2 CPC has been rejected on 18.06.2022. But instead of preferring appeal under Order 43 of CPC against the rejection of order under Order 39 Rule 1 & 2 CPC, the petitioner has come before this Court in criminal writ petition.

In this background that on the one hand, order passed under D.V. Act in D.V. Case No. 39 of 2019 has affirmed and acquired finality on contest with the petitioners and the Title Suit No. 246 of 2019 is pending in which injunction order of the petitioner has been rejected, this Court is not inclined to grant the entire relief which has been raised by the petitioners in the writ petition but only upon considering their age and on the

humanitarian ground, the Court is only protecting the old aged petitioners that petitioners shall reside in the said house and shall be entitled to reside in the said house till disposal of Title Suit No. 246 of 2019, the status quo as on the date shall be maintained i.e. respondent no.6 and petitioners both shall reside in the same house simultaneously.

With this direction, this Cr. Writ Application is hereby disposed off.

(Dr. Anshuman, J.)

prakashmani/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	