

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.704 of 2021

Arising Out of PS. Case No.-660 Year-2019 Thana- SITAMARHI District- Sitamarhi

Neel Kamal Sinha W/O Late Lallan Prasad Sinha R/O VILLAGE AND P.O.-
BHAWADEOPUR, SITAMARHI, P.S - RIGA AND DISTRICT-
SITAMARHI, PRESENTLY RESIDING AT RAJIV SADAN 67 E ROAD
NO 11F RAJENDRA NAGAR, PS KADAMKUAN, DISTRICT PATNA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH D.G.P., BIHAR, POLICE
HEADQUARTER, SARDAR PATEL BHAWAN BIHAR
2. THE A.D.G.P. (C.I.D.), BIHAR, POLICE HEADQUARTER, SARDAR
PATEL BHAWAN JAWAHAR LAL NEHRU MARG, PATNA
3. THE SUPERINTENDENT OF POLICE, SITAMARHI, DISTRICT
HEADQUARTER, DUMRA, SITAMARHI SITAMARHI
4. Vijayant Sinha @ Gaurav S/O- Late Anil Prakash Sinha Resident of Rajeev
Sadan, 67-E, Road No.-11F, Rajendra Nagar, P.S. Kadamkuan, District-
Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Jha
For the State	:	Mr. Nadim Seraj, GP 5
For the respondent no. 4 :		Mr. Nilanjan Chatterjee
		Mr. Sahil Kumar
		Mr. Anirvan Choudhary
		Mr. Ujjawal Raj
		Mr. Pulkit Ranjan

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 03-11-2023

The petitioner has filed the present writ application for
setting aside the letter, dated 28.11.2019, issued by the Additional
Director General of Police, Crime Investigation Department, Bihar
(respondent no. 2), to the Superintendent of Police, Sitamarhi
(respondent no. 3), by which the respondent no. 2 has directed to



maintain status quo over the land, in question, in order to maintain the law and order situation so long as the probate case is pending in the Court.

2. The case of the petitioner is that after the death of his father, the disputed plot no. 48, under new Ward No. 20, old Ward No. 13, having an area of 78 decimals, in Sitamarhi Municipality was partitioned and 39 decimals of land came in the share of the petitioner. The jamabandi of plot no. 48 is in favour of the petitioner. The nephew of the petitioner, namely, Vijaykant Sinha @ Gaurav/the intervenor respondent, filed Probate Case No. 32 of 2017 before the learned District Judge, Patna, for grant of probate as per the Will, executed by the grandfather of the nephew of the petitioner.

3. The petitioner appeared in the said probate case and filed his objection and accordingly the probate case was converted into testamentary suit, bearing Testamentary Suit No. 05 of 2018. The petitioner, on 17.02.2018, sold the land of plot no. 48 to one Kapildev Rai. After the sale, the nephew of the petitioner/intervenor respondent started making disturbance by claiming his right and title over plot no. 48, which was already portioned in favour of the petitioner. Thereafter, the petitioner, in the year 2019, lodged Sitamarhi Police Station Case No. 660 of 2019, under



Sections 420/34 of the Indian Penal Code, in which final form was submitted by the police.

4. Learned Counsel for the petitioner submits that the order of injunction, dated 25.09.2018, passed in Testamentary Suit No. 05 of 2018 by learned Additional District Judge-X, Patna, does not include the plot no. 48 and the same is not the subject matter of the testamentary suit. Plot no. 48 fell in the share of the petitioner and the petitioner is in possession of the same and as such he was entitled to sell the land of the said plot no. 48. Hence the impugned letter of Additional Director General of Police, Crime Investigation Department, Bihar, is arbitrary and is based upon no material. He further submits that in the schedule of property mentioned in the probate case/testamentary suit, plot no. 48 is not there, and it has been interpreted by the respondents that the property of Kamal Narayan is the plot no. 48. The police has no power to clarify the order of the civil court, which, in its injunction order, says that the properties mentioned in the petition of probate case should be preserved till the disposal of the case, having no mention regarding plot no. 48.

5. The petitioner is not aggrieved by the order of the Civil Court, but the manner in which the Additional Director General of Police, Crime Investigation Department, Bihar, has



interpreted the order of the learned Civil Court by insisting that the injunction/status quo is also over plot no. 48. By virtue of the instruction issued by the respondent no. 2, the petitioner is being deprived from approaching/going upon the plot no. 48 by the police in illegal manner.

6. On the other hand, learned Counsel for the intervenor respondent submits that he has filed the probate case, in question, for grant of probate relating to the properties mentioned in the Schedule A of the petition of probate case on the basis of the Will, dated 03.12.2002, executed in his favour and the said Will also include the plot of Kamal Narayan, which is. Plot No. 48.

7. On 25.09.2018, the injunction order was passed by the learned Additional District Judge-X, Patna, restraining both the parties from alienating the properties, in question, in any manner whatsoever till the disposal of the testamentary suit and further to preserve the properties mentioned in the petition of the probate case.

8. Sitamarhi Police Station Case No. 563 of 2018 was lodged by one Kapileswar Ray, one of the purchasers of the disputed land from the petitioner. The Circle Inspector, Riga, after inquiry, submitted a report that plot no. 48 is known as plot of Kamal Narayan. He further argued that the report submitted to the



Circle Officer, Riga, by Karamchari/Circle Inspector, Riga, (Annexure-I the counter affidavit) says that plot no. 48 is known as plot of Kamal Narayan. He also placed Annexure-J, the order, dated 03.09.2021, passed by the learned Chief Judicial Magistrate, Sitamarhi, arising out of Sitamarhi Police Station Case No. 660 of 2019, by which the final form submitted by the police has been accepted, to show that the learned Chief Judicial Magistrate, Sitamarhi, upon perusal of the case diary, has recorded that the disputed land, i.e. Plot No. 48, is described as plot of Kamal Narayan, for which a Will has been executed by the grandfather of the accused, i.e., the intervenor respondent. He also submitted that a departmental proceeding has been initiated against Tufail Ahmed, A.S.I. of Police, who had submitted a collusive report regarding the plot no. 48.

9. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

10. The only contention of the petitioner is that the impugned letter (Annexure-2) infringes the right of the petitioner to enjoy or enter into his land, i.e. plot no. 48, which is not part of the probate case and/or the Will.



11. Forum perusal of the petition of probate case, it is clear that the plot of Kamal Narayan is part of Schedule-A property, for which the grant of probate has been sought by the intervenor respondent. An order of injunction, dated 25.09.2018, has been passed by learned Additional District Judge-X, Patna, restraining the parties from interfering or alienating the properties mentioned in the petition of probate case.

12. From the report of the Circle Inspector and other police authorities, which have been made part of the counter affidavit filed on behalf of the intervenor respondent, reflects that the plot of Kamal Narayan is the plot no. 48 and by the impugned letter, the Additional Director General of Police, Crime Investigation Department, Bihar, has only directed to maintain status quo till the disposal of the testamentary suit over the properties, which is subject matter of the testamentary suit.

13. On the basis of contemporary documents brought on record by the intervenor respondent and the properties mentioned in the schedule of probate case, I am of the *prima facie* view that the plot of Kamal Narayan mentioned in the petition of probate case and/or the will, include plot no. 48.

14. In view of the above discussion, I do not find any reason to interfere with the impugned letter issued by the



Additional Director General of Police, Crime Investigation
Department, Bihar.

15. This application is, accordingly, dismissed.

16. It is made clear that my aforesaid *prima facie* view is
only tentative, which is subject to the final outcome of the
testamentary suit.

17. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	18-09-2023
Uploading Date	03-11-2023
Transmission Date	03-11-2023

