

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.706 of 2019**

Amarnath Prasad, S/o Jagannath Prasad, R/o Mohalla-Sahebganj Falgala, P.O. Chapra, P.S. Chhapra, District Saran

... .. Petitioner/s

Versus

Godawari Kuer, W/o Late Shardhanand @ Shardanand Prasad, R/o Mohalla-Sahebganj, P.O. Chhapra, P.S. Chhapra, District-Saran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Hansraj, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT**

Date : 15-03-2023

Heard learned counsel for the petitioner.

2. This instant Civil Miscellaneous Application under Article 227 of the Constitution of India has been filed for quashing the order dated 08.03.2019 passed in Misc. Appeal No. 15 of 2017 by the learned Additional District Judge – 11th, Saran at Chapra affirming the order dated 07.07.2017 passed by the learned Munsif 1st, Saran at Chapra whereby the learned trial court has ordered *status quo* in T.S. No. 3 of 2008.

3. The petitioner is plaintiff in the suit. The petitioner/plaintiff filed the suit bearing Title Suit No. 03 of 2008 claiming that the disputed land (Schedule 2 of the plaint) is a *rasta* over which his grand father acquired right through the registered *pattas*. The plaintiff has prayed mandatory injunction to close the wooden door, iron gate open towards the east of the



disputed land and to close the *nali* and prevent the flow of drain water in disputed land adjacent east of the house of defendant.

4. Learned counsel for the petitioner submits that although the learned appellate court found *prima facie* case in favour of the petitioner, but failed to grant injunction in favour of the petitioner. He has submitted that although *status quo* order has been passed but the defendant used to violate the said order.

5. The defendant by filing written statement and counter claim denied the claim of plaintiff and claimed that disputed land is her *sahan* land and exclusively belongs to her which is never used as *rasta*. In support of her claim the defendant has produced warrant of D.P. in Execution Case No. 20/52. It is accordingly prayed for rejection of prayer of plaintiff for mandatory injunction as the same is not maintainable.

6. It is alleged that the defendant is trying to change the status of suit land by making construction/ obstruction. Altogether four injunction petitions, three from plaintiff side and one from defendant side, were filed. The learned trial court appointed advocate commissioners time to time (three times) who had visited the disputed land and submitted their reports.

7. The learned trial court in order dated 07.07.2017



stated that in the suit it is to be decided on the basis of evidence that whether disputed land is a *rasta* or the *sahan* land of defendant. It is further observed that in the present circumstance *prima facie* case in favour of plaintiff has not been proved and further observed that both the parties are claiming possession on disputed land, accordingly, there is no balance of convenience in favour of plaintiff and it is also not clear who will be in more loss in case the application is allowed or rejected. However, in the interest of justice, the trial court directed both the parties for doing no construction work on disputed land and to keep *status quo* till further order and directed the plaintiff to take steps for early disposal of the case.

8. In appeal filed by the plaintiff/ petitioner against the order dated 07.07.2017 passed by the trial court being Miscellaneous Appeal No. 15 of 2017, the Appellate Court not found exceptional and extra-ordinary circumstances to grant the relief of mandatory injunction. However, in the facts and circumstances of the case, it is directed that in the meantime parties shall maintain *status quo* on the suit property as directed by the trial court vide



its order dated 07.07.2017 till disposal of the suit inasmuch as, no party shall try to change the nature of the suit property till its disposal. The trial court was directed to take all possible steps to dispose of the suit as soon as it is possible preferably within a period of nine months. Both the parties have been directed to cooperate in timely disposal of the suit.

9. Having heard the learned counsel for the petitioner and on perusal of material on record, it appears that the learned trial court as well as the appellate court below directed the parties to maintain '*status quo*' in the facts and circumstances of the case and the courts below assigned sufficient and cogent reasons in support of the order. The learned appellate court has passed the order considering the material facts and relevant law. I do not find illegality or irregularity and there is no substantive failure of justice apparent on the face of the record warranting interference in exercise of its supervisory jurisdiction under Article 227 of the constitution of India. The application is devoid of merit and liable to be dismissed with cost.

10. Accordingly, the instant Civil Miscellaneous



Application stands dismissed with cost of Rs. 5,000/- to be deposited by the petitioner in favour of District Legal Services Authority, Chapra.

(Sunil Dutta Mishra, J)

Khushbu/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.04.2023
Transmission Date	

