

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.272 of 2022

Suresh Kumar Kedia son of Late Ram Gopal Kedia Resident of Main Road Teghra Bazar, Mauza Habibpur Gaura Teghra, Ward No. 19, Nagar Panchayat, Pargana - Malki, P.O., P.S. and Sub Division Teghra, District - Begusarai, PIN Code 851133.

... .. Appellant/s

Versus

1. Nirmal Kumar Kedia son of Late Ram Gopal Kedia Residents of Main Road Teghra Bazar, Mauza Habibpur Gaura Teghra, Ward No. 19, Nagar Panchayat, Pargana - Malki, P.O., P.S. and Sub Division Teghra, District - Begusarai, PIN Code 851133.
2. Kumar Saurav son of Sri Nirmal Kedia Resident of Main Road Teghra Bazar, Mauza Habibpur Gaura Teghra, Ward No. 19, Nagar Panchayat, Pargana - Malki, P.O., P.S. and Sub Division Teghra, District - Begusarai, PIN Code 851133.
3. Kumar Siddharth son of Sri Nirmal Kumar Kedia Resident of Main Road Teghra Bazar, Mauza Habibpur Gaura Teghra, Ward No. 19, Nagar Panchayat, Pargana - Malki, P.O., P.S. and Sub Division Teghra, District - Begusarai, PIN Code 851133.
4. Dilip Kumar Kedia son of Late Ram Gopal Kedia Resident of Main Road Teghra Bazar, Mauza Habibpur Gaura Teghra, Ward No. 19, Nagar Panchayat, Pargana - Malki, P.O., P.S. and Sub Division Teghra, District - Begusarai, PIN Code 851133.
5. Lalita Devi Kedia wife of Late Bijay Kumar Kedia Residents of Main Road Teghra Bazar, Mauza Habibpur Gaura Teghra, Ward No. 19, Nagar Panchayat, Pargana - Malki, P.O., P.S. and Sub Division Teghra, District - Begusarai, PIN Code 851133.
6. Bhaskar Kedia son of Late Bijay Kumar Kedia Residents of Main Road Teghra Bazar, Mauza Habibpur Gaura Teghra, Ward No. 19, Nagar Panchayat, Pargana - Malki, P.O., P.S. and Sub Division Teghra, District - Begusarai, PIN Code 851133.
7. Nikesh Kumar son of Laxmi Narayan Rai Resident of Teghra Bazar, Sub Division Teghra, District Begusarai.
8. Bharat Kumar Roy son of Laxmi Narayan Rai Resident of Teghra Bazar, Sub Division Teghra, District Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Jitendra Kishore Verma, Advocate Mr. Anjani Kumar, Advocate Mr. Ravi Raj, Advocate Mr. Shreyash Goyal, Advocate Mr. Abhay Nath, Advocate
For the Respondent/s	:	Mr. Pramod Kumar Sinha, Advocate Mr. Arvind Kr. Sharma, Advocate Mr. Chetan Kumar, Advocate Mr. Chhitiz Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA



ORAL ORDER

12 03-10-2023 Heard Mr. Jitendra Kishore Verma, learned counsel for the appellant and Mr. Pramod Kumar Sinha, learned counsel for the respondents.

2. This Miscellaneous Appeal has been filed against judgment and order dated 07.05.2022 passed by the learned Sub Judge-Ist, Teghra, Begusarai in Title Suit No. 97 of 2019 whereby the learned trial court has rejected the injunction petition filed by the defendant-appellant.

3. The plaintiffs-respondents-Ist set filed the suit for declaration that the suit house is the joint residential house of the plaintiff's and the defendant had no right to sell away the suit property or specific portion to any stranger and disturb the residential unit by forceful dispossession at the instance of stranger. Defendant no. 2 and defendant no. 4, son of defendant no. 3, had executed two sale deeds in favour of two different persons (defendant nos. 5 and 6 / respondent nos. 7 and 8). Plaintiffs filed an amendment petition for adding the name of the purchasers as defendant nos. 5 and 6 and also for adding some facts and seeking relief for declaration that two sale deeds dated 07.09.2019 are forged, fabricated, ineffective without consideration and are void.

4. On summon defendant no. 1 appeared and filed his



written statement *inter alia* pleading that the plaintiffs and family members of defendant no. 1 are residing in the suit house which is predominantly a residential house. It is further contended that from the written statement of defendant nos. 2 to 4, it transpires that defendant no. 2 and son of defendant no. 3, namely, Bhaskar Kedia (defendant no. 4) illegally sold the entire house of the suit to defendant nos. 5 and 6 but they never came in possession, rather, they are trying to interfere with the possession of the defendant no. 1 and plaintiffs over the residential house in the suit as also the *godown* of husk on the ground floor.

5. The alleged sale deeds on the pretext of previous partition in the family of original parties and consequent allotment to the alleged vendors of defendant nos. 5 and 6 is totally false and concocted. There was no partition till date. It is further contended that there was a piece of *parti* land apart from residential house in the suit property and in view of the dire need of money to meet legal necessity of Lalita Devi Kedia wife of Vijay Kumar Kedia (defendant no. 3) as also Dilip Kumar Kedia (defendant no. 2), the defendant no. 1 on their request with the consent of other co-sharers sold 15 dhurs 10 dhurki out of the *parti* land to one Vijay Kumar Agarwal and distributed



the consideration money of Rs. 25 lacs by giving Rs. 5 lacs to defendant no. 2 and Rs. 20 lacs to defendant no. 3.

6. By virtue of two sale deeds dated 27.09.2019, the entire interest of defendant nos. 2 to 4 was sold to the purchaser namely defendant nos. 5 and 6.

7. During the pendency of the suit, defendant no. 1 filed an injunction petition dated 23.10.2021 in view of apprehended threat of dispossession at the instance of defendant nos. 5 and 6 (the purchasers). It was stated that the defendant no. 1 is running a business of husk on the ground floor of the house and the portion of the property including first floor are being used for residential purpose by the plaintiffs and defendant no. 1-appellant and their family members. Any interference in their possession is required to be restrained and *status quo* is required to be maintained.

8. The plaintiffs filed show cause by supporting the prayer made by defendant no. 1 of injunction on the suit premises. Defendant nos. 2, 3 and 4 filed their separate show cause and raised objection with regard to prayer made by defendant no. 1.

9. It is further contended by the defendant no. 1-appellant that defendant nos. 5 and 6 despite valid service of notice, did



not appear to oppose the injunction petition.

10. After hearing the parties, the learned trial court rejected the petition by order dated 07.05.2022 whereby the learned court below has held that defendant no. 1 has neither *prima facie* case nor balance of convenience in his favour. It is further held that no question of irreparable loss arises.

11. Mr. Jitendra Kishore Verma, learned counsel for the appellant has submitted that the order of learned lower court is a mechanical order and without applying judicial mind to the relevant consideration. It is further submitted that it was the duty of the court to preserve the suit property by grant of injunction order so that *status quo* is maintained and multiplicity of litigation is avoided and 3rd party interest is not unnecessarily created especially when the plaintiffs had not objected to grant of injunction. It is contended that the finding of absence of *prima facie* case is wholly unsustainable and the same suffers from mis-conception as to the real meaning and scope of the expression “*Prima facie* case” which means a fair question for trial raised *bonafide* which needs an adjudication and decision on merits and not the satisfaction as to *prima facie* title and in the present case even in view of meaningful reading of the order impugned, the *prima facie* case existed especially when there is



a presumption of jointness regarding the property in question. In the facts of this case especially when there is no evidence to prove partition, the property being joint and their being no evidence of partition, no co-sharers had any right to claim exclusive possession nor they had any right to disturb the possession of any co-sharers and as such status quo was fit to be granted *inter alia* restraining interference in possession of co-sharers. Defendant no. 1-appellant having resided on the first floor with his family members, running a *godown* of husk in the ground floor for earning his livelihood would suffer an irreparable loss and injury in case of unlawful dispossession which aspect has been over looked by perversely holding absence of irreparable injury. It is further argued that any purchaser of joint property/joint family property has no right to exclusive possession of any portion and he cannot take possession forcibly and can only sue for partition and possession. Learned counsel for the appellant relied upon a decision in case of ***Gajara Vishnu Gosavi Vs Prakash Nanasaheb Kamble and others*** reported in **2009 (4) PLJR SC 225**. The Hon'ble Supreme Court in case of ***Sidheshwar Mukherjee Vs Bhubneshwar Prasad Narain Singh and others*** reported in **AIR 1953 SC 487** has held that a purchaser of a



coparcerner undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property.

12. Learned counsel for the appellant further relied upon a decision in case of ***Dalpat Kumar and another Vs Prahlad Singh and others*** reported in ***AIR 1993 SC 276*** which has interpreted that *prima facie* case, balance of convenience and an irreparable loss. The Hon'ble Supreme Court has held that the court in exercise of power of granting an *ad interim* injunction has to preserve the subject matter of the suit by the *status quo* for the time being. It is further held by the Supreme Court that *prima facie* case is not to be confused with *prima facie* title which has to be established on evidence at the trial. Only *prima facie* case is substantial question raised, *bona fide*, which needs investigation and a decision on merits. Irreparable injury, however, doesn't mean that there must be no physical possibility of repairing the injury, but means only that the injury must be only a material one, namely that one cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction. The Court while granting or refusing grant injunction should exercise sound



judicial discretion to find out the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted.

13. Learned counsel for the appellant further submits that on the basis of sale deed executed in favour of respondent nos. 7 and 8, with the help of musclemans, they forcibly dispossessed the appellant from a part of the suit property and looted away various movables after breaking upon some of the locks of the appellant in the suit premises during the pendency of Status quo granted by this Court on 04.08.2022. However, a criminal case has been lodged bearing Complaint Case No. 1031 of 2022. It is further contended that the purchaser respondent nos. 7 and 8 further in flagrant violation of even the *status quo* order passed by this Court *vide* order dated 04.08.2022 have forcefully taken possession of rest of the suit premises except one room by dispossessing the defendant no. 1- appellant in willful violation of *status quo* order granted by this Court. Respondent nos. 7 and 8 have demolished major part of the building and remodeling it by making fresh construction and such activities had been continuing in violation of *status quo* order dated 04.08.2022.

14. It is also mentioned that plaintiff along with his son



despite the knowledge of the *status quo* order dated 04.08.2022 have willfully violated the same and have executed sale deed dated 15.05.2023 in favour of one Rinku Devi for rest part of land measuring 2.434 decimals equivalent to 14 dhurs and 5 dhurkis. It is submitted that plaintiff as well as respondent nos. 7 and 8 (purchasers) continued to violate the order of this Court and, therefore, they may be restrained from further violation of the *status quo* order dated 04.08.2022 passed by this Court.

15. On the other hand the respondent nos. 7 and 8 appeared through his counsel and filed reply to show cause and contended that Ram Gopal Kedia died on 10.11.1950 leaving behind four sons, namely, Vijay Kumar Kedia (original defendant no. 3), Suresh Kumar Kedia (appellant), Nirmal Kumar Kedia (plaintiff-respondent no. 1) and Dilip Kumar Kedia (defendant no. 2). It is submitted that Vijay Kumar Kedia died leaving behind his son, namely, Bhaskar Kumar Kedia (defendant no. 4). All the sons of Ram Gopal Kedia have share in the suit house measuring 2 Kattha 13 dhurs; each sons have a share of 13 dhurs 5 dhurkis in the suit house together with some vacant portion of it. Defendant no. 1-appellant, Suresh Kumar Kedia himself sold an area of 15 dhurs and 10 dhurkis on 20.07.2019 more than his share of 13 dhurs and 5 dhurkis to one



Shri Vijay Kumar Agarwal. It is submitted that the recital with the sale deed mentioned that the properties sold is an ancestral property having been partitioned and came to his share. From the recital of sale deed, it appears that the suit house is not joint, rather, partitioned property and each share holders have the right to deal with the share in the suit house according to his or her choice. It is submitted that similarly, Dilip Kumar Kedia (defendant no. 2), by two registered sale deeds dated 27.09.2019 sold his share in the suit house measuring 12 dhurs and 10 dhurkis in favour of Bharat Kumar Rai (respondent no. 8) and put him in possession thereof and the suit property being an ancestral property having been partitioned and the properties sold fall to his share and defendant no. 4, namely, Bhaskar Kumar Kedia, son of Ram Gopal Kedia sold his share measuring 12 dhurs and 10 dhurkis to Nikesh Kumar alias Nikesh (respondent no. 7). Both the vendors (defendant nos. 2 and 4) put the vendees in possession over the area sold to the respondents (respondent nos. 7 and 8). It is submitted that respondents had already purchased the shares of the respective vendors of the suit house under two sale deeds dated 29.03.2019 prior to filing of the suit and came in possession thereof. Defendant no. 1-appellant himself sold his share in the suit



house and put his purchaser in possession of the sold land. Therefore, he lost his title and possession in the suit house in the hands of his purchaser, who have already got mutated his name and getting the rent receipts. The respondents are not trying to forcibly dispossess as being alleged by the defendant no. 1-appellant who himself is not in possession of the suit house. It is prayed that in the aforesaid facts, the injunction petition is not maintainable.

16. It is submitted that since the date of purchase of the suit house under two registered sale deeds, the respondents have already enjoined their possession in the suit house. The allegation of dispossession has been totally denied by the respondents. It is further submitted that the Complaint Case No. 1031 of 2022 has been filed after rejection of injunction petition by order dated 07.05.2022 only to create some documents in his favour and for the purpose of filling Miscellaneous Appeal, which has no relevance.

17. Considering the submissions of the parties as well as impugned order, it is manifest that the suit has been filed for declaring that the defendants have no right to sale the portion of the residential house in suit belonging to the plaintiffs and defendants to the strangers and further to declare that the sale



deed dated 27.02.2019 executed by defendant no. 2 in the name of Bharat Kumar Rai and sale deed dated 27.02.2019 executed by defendant no. 4 in the name of Nikesh Kumar are forged, fabricated and ineffective without consideration and are void in view of the fact that the plaintiffs and defendants-1st party are in the joint possession of the residential house and no co-sharers have any right to sell away the portion of the residential house to the strangers. This suit is pending for final adjudication and on the basis of pleadings, the trial court has to frame issues with regard to declaration of title and consequential relief.

18. In the case of *Sidheshwar Mukherjee Vs Bhubneshawr Prasad Narain Singh and others* reported in *AIR 1953 SC 487*, the Hon'ble Apex Court came to the conclusion that a purchaser of a coparcener undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of the share in the suit property. Reliance has been placed in case of *Meharwal Khewaji Trust, Faridkot Vs Baldev Dass* reported in *AIR 2005 SC 104* in which the Hon'ble Apex Court has held as follows:-

10. Be that as it may, Mr Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a



party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower



appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.

19. In the aforesaid case, the learned trial court had granted temporary injunction restraining the respondent from alienating the suit property and putting up any construction thereon. The said order was restored by the aforesaid decision of the Apex Court.

20. However, in the present case, it is admitted fact that some of the share has been sold by the parties before filing of the suit and even some of the land sold by the plaintiff after passing of the *status quo* order passed by this Court on 04.08.2022. In the interest of justice, 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 the same is available at the time of final adjudication and the decree doesn't become a barren one. This has been held in the case of ***Dharam Nath Ojha Vs Raghu Nath Ojha*** reported in ***(2001) 2 PLJR 268***.

21. Considering all the aspects of the matter, I am of the view that the order dated 04.08.2022 passed in this appeal shall continue till the final disposal of the suit. It is made clear that



any sale deeds executed during the pendency of the suit shall have no effect till the disposal of the suit.

22. In the result, the impugned order dated 07.05.2022 passed by the Sub-Judge-I, Teghra, Begusarai in Title Suit No. 97 of 2019 is hereby set aside.

23. The Miscellaneous Appeal is, accordingly, allowed.

24. The learned trial court is directed to expedite the trial and conclude the same, preferably, within a period of nine months from the date of receipt/production of a copy of the order.

(Khatim Reza, J)

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