

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.619 of 2023**

1. Madheshwar Yadav S/o Late Chandardeo Yadav, Resident of Village- Dhanawan, P.S. Bodh Gaya, District- Gaya.
2. Savitri Bharti D/o Late Sadhu Yadav, W/o Madheshwar Yadav, Resident of Village- Dhanawan, P.S. Bodh Gaya, District- Gaya.

... .. Petitioners.

Versus

1. Sunil Kumar Son of Amrit Singh, Resident of Mohalla- Dujra Road @ Durja Road, Budha Colony, P.S. Budha Colony, District- Patna.
2. Binod Kumar @ Binod Sharma Son of Late Devanchand Sharma, Resident of Village- Dhanawan, P.S. Bodh Gaya, District- Gaya. At present Resident of Gali No. 1, Indra Basti (Balty), Pathankot, P.S.- Pathankot, District Pathankot (Punjab).

... .. Respondents.

Appearance :

For the Petitioners	:	Mr. P.N.Shahi, Sr. Advocate Mr.Surendra Kishore Thakur, Advocate
For the Respondents	:	Mr.Satyabir Bharti, Advocate Mr. Abhishek Anand, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 21-12-2023

Heard learned senior counsel for the petitioners and learned counsel for the respondents.

2. The matter has been taken up for hearing for the first time on mentioning being made on behalf of the petitioners and with the consent of the parties, I intend to dispose of the petition at this stage itself.

3. The instant petition is directed against the order dated 19.12.2022 passed by learned District Judge, Gaya in Misc. Appeal No. 13 of 2022, whereby and whereunder the learned



District Judge, Gaya has rejected the Misc. Appeal and confirmed the order dated 20.07.2022 passed by learned Sub Judge-II, Gaya in Title Suit No. 155 of 2021/96 of 2021 filed under Order XXXIX Rule 1 and Rule 2 of the Code of Civil Procedure, whereby and whereunder the learned Sub Judge-II, Gaya has rejected the ad-interim injunction petition filed by the petitioners/plaintiffs.

4. Briefly stated, the case of the petitioners as it appears from the record is that the petitioners are the plaintiffs before the learned trial court and defendant nos. 1 and 2 and respondent nos. 1 and 2, respectively. The petitioners purchased parts of two plots of land. A portion of R.S. Plot No. 90, Khata No. 141 having an area of 0.42 acres from Ratan Gope, Vijay Yadav, Mahavir Yadav, Surendra Yadav and Indradev Yadav, sons of Bachan Gope jointed executed sale deed No. 16651 dated 23.09.2019 for consideration amount of Rs.19,20,000/- with specified boundaries. Further petitioner no. 1/ plaintiff no. 1 purchased another piece of land vide sale deed No. 16365 of R.S. Plot No. 89 of Khata No. 39 having an area of 0.32 acres with specified boundaries for consideration amount of Rs.17,00,000/- only. Both the abovenoted plots were carved out of a portion of C.S. Plot No. 33 appertaining to C.S. Khata No.



55. After purchase of the land, the petitioners/plaintiffs came into possession of the suit land. The land purchased by the petitioners is situated in Thana No. 351, Mauza – Dhanawan, Police Station – Bodh Gaya, Anchal – Bodh Gaya, District – Gaya. Further case of the petitioners is that defendant no.1/ respondent no. 1 in Mutation Case No. 5580R27/2019-20 and Mutation Case No. 5357/2019-20 claimed that he has purchased the land from one Binod Kumar alias Binod Sharma, Son of Diwan Chand Sharma of village – Dhanawan vide sale deed dated 07.02.2000 but said Binod Kumr @ Binod Sharma has no title or possession of the suit land and he was not entitled in any manner to transfer the land or to execute any sale deed. Further the land was never mutated in favour of Binod Sharma. The description of land was not correct in the sale deed of Binod Sharma. For this reason the descriptions of land in the sale deed of respondent no. 1/ defendant no.1 is for some other land as name of the village has been mentioned as Dhandhwa with Thana No. 357 which is of village – Dhandhwa and not of village Dhanwan. Even then the respondent no. 1/ defendant no. 1 threatened the plaintiffs on 19.01.2021 to dispossess them from their land.

The petitioners have further mentioned that



admittedly the land in question belonged to one Somar Gope who was having two sons Chhotan Gope and Lotan Gope. Chhotan Gope was blessed with one daughter Jamuni Devi. Lotan Gope executed a sale deed in favour of one Doman in the year, 1968. Further Jamuni Devi who was half share, executed a sale deed in favour of Ganiya Devi with respect to Plot No. 33 on 07.04.1972. Later on, Doman executed a sale deed in favour of Binod Sharma, defendant no. 2 in the title suit with respect to Plot No. 33 of village – Dhandhwa (not Dhanawan). Doman executed the sale deed with respect to land of village Dhandhwa, Thana No. 357, Tauzi No.3160 whereas Plot No. 33 of village – Dhanawan is under Tauzi No. 104, Thana No. 351 which is under dispute. Further Ganiya Devi also executed a sale deed in favour of Binod Sharma for land situated in village- Dhandhwa, Thana No. 357, Tauzi No.m 3160. Subsequently, Binod Sharma executed sale deed in favour of Sunil Kumar (defendant no. 1) vide Sale Deed No. 12784 dated 18.02.2000 with respect to the land of Dhanwan, Plot No. 33 (old) Plot No. 673 (New). The petitioners purchased the aforesaid land vide registered sale deed executed by the heirs of Chhotan Gope. The land possession certificate stood in the names of vendors. Further case of the petitioners is that thereafter the petitioners



filed an application for mutation and the same was dismissed and mutation appeal was also dismissed. However, the petitioners filed an application for cancellation of Jamabandi in favour of defendant no. 1 after getting heed of certain documents. Subsequently, a Five Men Enquiry Committee was constituted by the District Magistrate and report was submitted and in the light of the report, documents and sale deed, the Jamabandi entered in the name of defendant no. 1 was ordered to be cancelled by the Additional Collector vide order dated 28.04.2022. Even the defendant no. 2 in his written statement in the title suit has also stated that he did not execute sale deed with respect to village -Dhanawan. The petitioners filed an injunction petition before the learned Sub Judge-II, Gaya that defendant no. 1 has started construction over the suit land and they also prayed that defendant no. 1 be restrained from making any construction and changing the physical feature of the suit land. However, learned Sub Judge-II, Gaya vide order dated 20.07.2022, rejected the injunction petition without considering the prima facie case, balance of convenience and irreparable loss in favour of petitioners and also without considering the report of Five Men Committee and also without considering the fact that defendant no. 1 has not purchased the suit plot which



was situated in village – Dhanwan rather he purchased the suit land in village – Dhandhwa. The injunction was rejected only on the ground that the petitioners/plaintiffs did not claim recovery of possession. Against the rejection order of the learned Sub Judge-II, Gaya, the plaintiffs/respondents preferred an appeal but the learned appellate court dismissed the appeal confirming the order passed by the learned Sub Judge-II, Gaya.

5. Learned senior counsel appearing on behalf of the petitioners submits that the orders of the learned courts below suffered from a number of infirmities. The learned courts below did not consider the recital of sale deeds of defendant no. 1 and failed to consider the case of petitioners for grant of injunction at this stage. The learned courts below did not consider the fact that the land of the petitioners is situated in village – Dhanawan whereas the land of the defendant as per recital of the sale is of village – Dhandhwa. Further the learned courts below did not consider the fact that vendors of the plaintiffs were in possession over the suit land and the land possession certificate was also issued in their favour. After the purchase, the petitioners/plaintiffs came into possession over their purchased land. So there was no prima facie case in favour of defendant no. 1. Further the learned courts below failed to appreciate that



the petitioners were having prima facie case, balance of convenience and in case no injunction was granted to them they would suffer irreparable loss. Learned senior counsel relies on a decision in the case of *Mandati Ranganna Vs. T Ramachandra* reported in *(2008) 11 SCC*, stressing the fact even if the injunction was not granted by the learned courts below, allowing the defendant no. 1 to carry out constructions on the suit land should have been made subject to furnishing sufficient security, since the defendant no. 1 has been making construction on the suit land with undue haste.

6. Learned counsel appearing on behalf of defendant no.1/respondent no. 1 has vehemently contended that there is no infirmity in the orders of the learned courts below. The learned trial court as well as appellate court has rightly come to the conclusion that the petitioners/plaintiffs have neither a prima facie case nor balance of convenience was in their favour. So there was no question of suffering any irreparable loss. Learned counsel submits that the vendor of defendant no. 1 purchase the land from Doman and Ganiya Devi and they were purchasers from original landlord. So there is no doubt over the title of respondent no. 1/ defendant no. 1 whereas the learned appellate court has held in clear terms that the title of the plaintiffs/



appellants over suit land appear to be clouded. Learned counsel further submits that the stress put on the name of village – Dhanawan or Dhandhwa is fallacious since there is no dispute over boundary. Further the sale deed of defendant no. 1 is of the year, 2000 and he has been in possession of the suit land since then. Title could not be decided by a revenue court and enquiry conducted by the revenue authority to decide the veracity of sale deed and title of a person was without jurisdiction. The order of learned Additional Collector, Gaya suffer from perversity as he relied upon the report of the Five Men Enquiry Committee constituted by the District Magistrate who has no such authority. The learned Additional Collector entered into the complex question of title and genuineness of sale deeds of the parties. Considering the illegal nature of order of the learned Additional Collector, learned Bihar Land Tribunal stayed the operative part of the order of the learned Additional Collector, Gaya till final order by the learned Collector, Gaya in appeal. The sale deeds of the petitioners/ plaintiffs are sham documents and it is apparent from its bare perusal. The petitioners/ plaintiffs have not shown in what manner they made the payment of Rs.19,20,000/- and Rs.17,00,000/- to their vendors. Learned counsel has pointed towards the government price of the land which has been



mentioned at Rs.51,90,000/- and Rs.38,40,000/-, respectively in the two sale deeds. Learned counsel further submits that this shows the sham nature of two documents and the petitioners/plaintiffs are property dealers who have purchased litigation. Learned counsel further submits that since respondent no. 1/ defendant no.1 has always been in possession, the petitioners were compelled to admit this fact and in their injunction application they stated that the defendant no. 1 was in wrongful possession of the suit land and was doing some construction on the suit property. Both the learned courts below recorded the finding that the petitioners/plaintiffs were not in possession on the suit land but they did not seek any relief of recovery of possession though they sought relief of cancellation of sale deed executed in favour of defendant no. 1. Learned counsel further submits that once the possession of defendant no. 1 has been accepted on the suit property, naturally balance of convenience would lie in his favour and if any injunction order was passed, it would have caused irreparable loss to defendant no. 1. Since construction work is going on the suit land of the respondent no.1/defendant no.1 in full swing.

7. In support of his contention, learned counsel for respondent no. 1/defendant no. 1 has relied on a decision of the



Hon'ble Supreme Court in the case of ***Terene Traders Vs. Rameshchandra Jamnadas & Co.*** reported in ***AIR 1987 SC 1492*** and paragraph 4 of the said judgment reads as under:-

“The Bombay City Civil Court in a suit for declaration and injunction brought by plaintiff-Respondent 1 Rameshchandra Jamnadas & Co., after hearing both the parties, refused to grant its application under Order 39 Rule 1 of the Code. The grant or refusal of temporary injunction was in the discretion on the City Civil Court. No doubt that discretion was a judicial one to be exercised in accordance with reason and on sound judicial principles. It was not satisfied that the plaintiff had any prima facie case to justify the grant of such temporary injunction or that the balance of convenience required it. The City Civil Court on a careful consideration of the evidence came to a definite conclusion that plaintiff-respondent 1 was not in possession of any portion of the suit premises on the date of the institution of the suit. Even the learned Single Judge has not come to a different conclusion as he observes that the plaintiff was not in “khas” possession. There was no occasion for the High Court to have granted temporary injunction. It is not the case of the City Civil Court acted either illegally or with



material irregularity in dismissing the plaintiff's application for temporary injunction. That being so, the High Court could not have invoked its jurisdiction under Section 115 of the Code."

Learned counsel further submits that even in that case since it was observed that petitioners/plaintiffs were not in possession of any portion of the suit premises, injunction was refused.

Learned counsel has further relied upon a decision of the Hon'ble Supreme Court in the case of ***Prakash Harishchandra Muranjan Vs. Mumbai Metropolitan Region Development Authority and Another*** reported in ***(2009) 3 SCC 432***. In this case Hon'ble Supreme Court declined to interfere when prayer for injunction was concurrently refused by two courts and held that it could take a different view only if the judgment of the court below was found to be perverse. Thus, learned counsel submits that there is no perversity or illegality in the order of the learned trial court as well as order of the learned appellate court and the same needs to be upheld.

8. I have given my thoughtful consideration to the submissions made on behalf of the parties. Order 39 Rule 1 and 2 of the Code of Civil Procedure reads as under:-



“1. Cases in which temporary injunction may be granted.- *Where in any suit it is proved by affidavit or otherwise-*

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach.- *(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any*



kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

*(3) 2[***]*

*(4) 2[***]*

9. The petitioners have sought the injunction against the defendant no.1 restraining him from making construction over suit land or alienating the same. Now, the grant of interlocutory injunction is a discretionary remedy and, in the exercise of judicial discretion in granting or rejecting to grant, the court has to take into consideration three guidelines:

(i) Whether the party seeking injunction has made out a *prima facie* case, this is a *sine qua non*.

(ii) Whether balance of convenience



lies in his favour; i.e., whether it could cause greater inconvenience to him if the injunction is not granted than the inconvenience which the other side would be put to, if the injunction is granted.

(iii) In the injunction is not granted, whether party seeking injunction would have to suffer irreparable loss.

10. I am afraid, on all these counts the case of the petitioners would fail. Admittedly, the petitioners are not in possession of the suit land rather the petitioners are subsequent purchasers, that too, their sale deed is after 19 years of the sale of defendant no. 1. Notwithstanding what revenue authorities have ordered or observed, title will only be decided by a competent Civil Court, that too, after proper trial and not in a perfunctory manner. Though much stress has been put on the difference in names of village in sale deeds of respondent no.1/defendant no.1, yet the petitioners did not bring on record the copies of sale deed of defendant no. 1. Further spelling of names of two villages are almost similar and names are similar sounding and even the petitioners have used the names of two



villages interchangeably in their petition. In paragraph 20 they have admitted that sale deed of defendant no. 1 was with respect to the land of village – Dhanawan. In paragraph 24 of their petition the petitioners have stated that vendor of the defendant has not executed sale deed of village – Dhandhwa rather it was the land of village – Dhanawan. Similar to the effect is the statement in paragraph 25 and 31. These instances show interchangeability in the names of the village might be typographical error but in view of specified boundaries of the suit land, raising so much hue and cry over the name of the village pales into insignificance. In the light of specified boundaries of the disputed plots of land, the question of wrong recital in sale deeds regarding name of village and other description is a matter of trial. Admittedly the respondent no.1/defendant no.1 is in possession. Again legality of his title and possession is something to be decided by the learned trial court. At this stage when only a prima facie case is to be considered, evidently it is in favour of the respondent no.1/defendant no.1. When petitioners/plaintiffs failed to show prima facie case in their favour and granting injunction at this stage would cause greater inconvenience to the respondent no.1/defendant no.1. So I hardly find any merit in the submission of learned senior counsel of the petitioners on the



aforesaid counts.

11. Now on consideration of impugned orders of the learned trial court as well as learned appellate court refusing the injunction, the learned senior counsel for the petitioners has failed to point out any illegality, irregularity or infirmity so as to interfere with the orders under impugned. The learned courts below have rightly held that the prima facie was not in favour of the petitioners/plaintiffs since admittedly defendant no. 1 is in possession of land and has been making construction over it. This admission automatically tilted the balance of convenience in favour of defendant no. 1. If the petitioners are not having the prima facie case or balance of convenience in their favour, they would not suffer any irreparable loss. The reliance of learned senior counsel on the decision in the case of ***Mandati Ranganna Vs. T Ramachandra*** reported in ***(2008) 11 SCC*** is misplaced since it was a case for partition in family and there was no dispute over title. Further 3rd party interest were created so security was asked to be furnished. The facts of the present case are not at all similar with the decision cited by learned senior counsel for the petitioners. So his submission on this point is not appreciable. On the other hand, the authorities ***Terene Traders Vs. Rameshchandra Jamnadas & Co. and***



Prakash Harishchandra Muranjan Vs. Mumbai Metropolitan Region Development Authority and Another (supra) cited by the learned counsel for respondent no. 1/defendant no. 1 are quite relevant and support the case of the respondent no. 1/defendant no. 1.

12. In the light of the discussion made hereinabove, I do not find any ground to interfere with the concurrent findings of two learned courts below and the orders of learned trial court and the learned appellate court are upheld.

13. In the result, the instant Civil Miscellaneous Petition is dismissed being devoid of merit.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26.12.2023
Transmission Date	N/A

