

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14472 of 2022

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1. Pankaj Jain, Son of Late Kailash Chand Jain, Resident of Mohalla- Flat No.- 51-52, Fifth Floor, Jhelam Apartment, Patliputra Path, Rajendra Nagar, Patna, P.S.- Kadamkuan, District- Patna, PIN- 800016.
 2. Arpana Jain, W/o Pankaj Jain, Resident of Mohalla- Flat No.- 51-52, Fifth Floor, Jhelam Apartment, Patliputra Path, Rajendra Nagar, Patna, P.S.- Kadamkuan, District- Patna, PIN- 800016.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Social Welfare, Govt. of Bihar, Patna.
2. Sr. Superintendent of Police, Patna.
3. Dy. Superintendent of Police, Patna.
4. Thanadhyksh, Kadamkuana Police Station
5. Kusum Devi Jain @ Kusum Devi W/o Late Kailash Chand Jain, Resident of Mohalla- Flat No. 51-52, Fifth Floor, Jhelam Apartment, Patliputra Path, Rajendra Nagar, Patna, P.S.- Kadamkuan, District- Patna, PIN- 800016.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Dr. Harendra Nath Ojha, Advocate.
For the State	:	Mr.Prasant Pratap, GP-2. Mr. Lala S. N. Ravi, AC to GP-2.
For Respondent No.5	:	Mr. Nirad Parashar, Advocate. Ms. Niddhi, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 02-01-2023 Heard the parties.

2. Learned counsel appearing on behalf of the petitioners has drawn attention of this Court to the pleadings made in Para Nos. 12 and 13 of the writ petition which are reproduced hereunder:

“12. That it is humbly stated that the husband of complainant namely Late Kailash Chand Jain had already sold that claimed property to Mr. Manoj Kumar, S/o Late Ramanuj Prasad in Feb 2020 (approx) and in that sale deed,



she (the complainant) was endorsed herself as witness of that transaction.

13. That it is humbly stated that the complainant had annexed the aforesaid purchased Deed in her complaint, which was as stated above, already sold to Manoj Kumar and the learned Presiding Officer has then pleased to direct the petitioners to hand it over to Complainant within 7 days otherwise Thanadyaksh Kadamkuan has hand it over with the cooperation of Block Development Officer. And now the Thanadhyaksh Kadamkuan including Dy. S.P. Patna and other Higher Police Officer are called them and threatened to take action against the petitioners for it.”

3. The learned counsel further submitted that the petitioner is not aggrieved with the sale deed executed by his late father to which her mother - respondent no.5 was the witness, rather there are other properties falling in the share of his father for which he has apprehension that the same too can be disposed of by her mother-respondent no.5 to which she must be restrained and seeks interference of this Court. It is further submitted that the respondent no.5 was the witness to the sale deed executed by her husband Late Kailash Chand Jain to one Manoj Kumar, Son of Late Ramanuj Prasad in February 2020. S.D.M., Patna Sadar without taking note of the said fact had passed order with respect to the said property, the title of which has passed to the third party said Manoj Kumar. Petitioner further submitted that the father of the petitioner had left huge amount in the account standing in different banks and respondent no.5 gets enough money from the same on account



of interest from the money deposited in the Bank.

4. This Court vide order dated 16.11.2022 had issued notice to respondent no.5-mother of the petitioner namely Smt. Kusum Devi, who has tendered her appearance through learned counsel Mr. Nirad Parashar and Ms. Niddhi. Learned counsel submitted that such disputed question of facts cannot be entertained in writ jurisdiction. It has also been submitted that as on date respondent no.5 is being taken care of by her daughter.

5. Having considered the statements made in Para Nos. 12 and 13, the matter primarily relates to title. Petitioner is the son of Late Kailash Chand Jain and he has made specific statement in Para-12 and 13 of the writ petition regarding certain family properties in which the petitioner claims to be entitled for his share. Petitioner has apprehension that his mother being an old lady can fall pray to some outsider/purchaser and seeks interference of this Court to quash the order dated 20.08.2022 passed in Prakaran Case No. 76 of 2020 by the Sub-Divisional Magistrate/President, Abhikaran Committee, Sadar, Patna. He further submitted that the impugned order is non speaking and fit to be quashed.

6. Having regard to the facts and circumstances of the case as also considering the submissions made by learned



counsels for the parties, from perusal of the impugned order, it appears that Sub-Divisional Magistrate, Patna Sadar has passed order in appeal under Section 16 of the Act, 2007 by passing certain direction and holding that the petitioner is under obligation being the son of the respondent no.5 to maintain her to the needs of his mother so that she may lead a normal life. That apart certain directions have been issued to the local police that in case the petitioner is bent upon not to hand over the keys of the flat situated at four floor, Ashiyana Chamber, Exhibition Road, Patna, then in that case the local police shall proceed in accordance with Section 22 of the Act.

7. Having perused the application made by the respondent no.5 to the S.D.M., Patna Sadar who has initiated a proceeding under the Act, 2007, it appears that instead of treating the said application to have been filed under Section 22 of the Act, 2007, he has passed order considering the said application as application for maintenance and without holding any summary inquiry and as per the provision of Section 8 has enforced the order to have been passed under Section 16 of the Act, 2007 treating as an appeal.

8. Prima facie, it appears that the manner in which the S.D.M., Patna Sadar has proceeded is not in accordance with



law, however taking into consideration the plight of respondent no.5, the order is not interfered to the extent that the respondent no.5 is only apprehensive that the petitioner who is her son is not giving her back the keys of the flat in question. It has also been submitted by learned counsel appearing on behalf of the respondent no.5 that the respondent no.5 is residing along with her daughter. The petitioner, in such circumstances, is legally bound to maintain his mother so that her protection of life and property cannot be jeopardized by the action of the petitioner.

9. With the aforesaid directions, the writ application stands disposed of.

(Purnendu Singh, J)

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