

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.57 of 2024

=====

Upendra Kumar @ Upendra Roy Son of Ashok Rai, Resident of Mauza,
Mirpur, Bhuwal, P.O.- Dighwara, Police Station- Dighwara, District- Saran.

... .. Petitioner/s

Versus

1. Ashok Rai Son of Late Jugeshwar Rai, Resident of Mauza, Mirpur, Bhuwal,
P.O.- Dighwara, Police Station- Dighwara, District- Saran.
2. Ajay Kumar Rai, Son of Ashok Rai, Resident of Mauza, Mirpur, Bhuwal,
P.O.- Dighwara, Police Station- Dighwara, District- Saran.
3. Saheb Kumar Rai, Son of Ashok Rai, Resident of Mauza, Mirpur, Bhuwal,
P.O.- Dighwara, Police Station- Dighwara, District- Saran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Sudish Kumar, Advocate
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

Date : 02-02-2024

The matter has been taken up on mentioning being
made on behalf of the petitioner.

2. The petitioner is aggrieved by the order dated
23.11.2023 passed by learned Subordinate Judge-I, Sonapur,
Saran in Title Suit No. 235 of 2023.

3. Learned counsel for the petitioner submits that
the defendant/petitioner was restrained from making
construction over the suit property and parties were directed to
maintain status quo without hearing the defendant/petitioner. No
notice was issued as is reflected from the copy of the order sheet



attached with the present petition. Learned counsel prays that the impugned order be stayed and notice be issued to the respondents.

4. The order sheets dated 24.08.2023, 29.09.2023, 03.11.2023 and 23.11.2023 are quoted hereinbelow, which read as under:-

“24.08.2023 यह वाद आज ग्रहण के बिन्दु पर सुनवाई हेतु निश्चित है। वाद पुकारा गया। पुकार पर वादी के विद्वान अधिवक्ता न्यायालय में उपस्थिति हुए। ग्रहण के बिन्दु पर सुना। वाद का अवलोकन किया। वाद के अवलोकन से ज्ञात होता है कि वादी द्वारा त्रुटि का सुधार कर लिया गया है। अतः वाद को ग्रहण करते हुये वादी को निर्देश दिया जाता है कि वादी अग्रिम तिथि को तलवाना के साथ अपेक्षित दाखिल करें। वाद दिनांक 29.09.2023 को आपेक्षित हेतु।

हो/- अस्पष्ट

29.09.2023 डाक रसीद दाखिल किया गया। वाद दिनांक 01.11.2023 S/R हेतु।

हो/- अस्पष्ट

03.11.2023 Plaintiff Pairvi filed. Heard. Office issue show cause to defendant. Put up on 23.11.2023.

Sd./Illegible

23.11.2023 वादी की हाजरी तथा डाक रसीद एवं फी साबूत के साथ विवादित जमीन पर हो रहे निर्माण कार्य का फोटोग्राफ दाखिल किया गया और निवेदन किया गया कि मुदालहन मुकदमा की जानकारी के



बावजू न्यायालय नहीं आकर विवादित जमीन पर ता०
जबरदस्ती निर्माण कार्य करना शुरू किया है।
सुना और अभिलेख का अवलोकन किया। अतः
मुदालह को आदेश दिया जाता है कि मुदालह के
उपस्थिति तक विवादित जमीन पर निर्माण
(construction) नहीं करे तथा यथास्थिति बनाए
रखे। उभय पक्ष आदेश का पालन करे।
वाद दिनांक 2.12.2023 वास्ते कारण पृच्छा।

ह०/- अस्पष्ट

5. From perusal of order dated 24.08.2023, it appears that the plaintiffs were directed to file requisites with Talbana and thereafter, postal receipts were filed on 29.09.2023 which goes on to show that notice was issued to the defendant/petitioner and postal receipts were filed on record. Further, order dated 03.11.2023 shows show cause was directed to be issued to the defendant and again from the order dated 23.11.2023 it appears that postal receipts were filed on record. If notice was issued upon the defendant, the defendant cannot take this plea that no notice was issued. It further transpires from the order dated 23.11.2023 that the defendant was restrained from making further construction over the suit property and was directed to maintain status quo till his appearance. Thus, it is very much clear from the order dated 23.11.2023 that as soon as the defendant/petitioner appears before the learned trial court, learned trial is duty bound to hear the defendant/petitioner and



pass order on injunction petition.

6. Since final order is yet to be passed on the injunction petition as it appears from the order sheet annexed by the defendant/petitioner, I think the present petition is premature and hence, it is disposed of as such with liberty to the petitioner to raise all issues before the learned trial court and the learned trial court is directed to pass a reasoned order on the injunction application after hearing the parties.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	05.02.2024
Transmission Date	N.A.

