

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.197 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- Bhagalpur

=====

RAJESH CHANDRA JHA S/O LATE DR. DINESH CHANDRA JHA R/O VILLAGE- NAGARPARA, P.S- BHAWANIPUR (BIHPUR), DISTT.- BHAGALPUR, PRESENTLY RESIDES AT MOHALLA-SIYARAMNAGAR, BHIKHANPUR, P.S- ISHAKCHAK, DISTT.- BHAGALPUR.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE DIRECTOR GENERAL OF POLICE, GOVT. OF BIHAR, PATNA. BIHAR
2. THE SUPERINTENDENT OF POLICE, NAUGACHIYA, DISTT.- BHAGALPUR. BIHAR
3. THE OFFICER IN CHARGE, BHAWANIPUR POLICE STATION, NAUGACHIYA, BHAGALPUR. BIHAR
4. RAMESH KUAMR SAH then SHO BHAWANIPUR POLICE STATION, NAUGACHIYA, DISTT.- BHAGALPUR. BIHAR
5. ASHUTOSH JHA S/O LATE SHREE KRISHNA JHA R/O MOHALLA-NAYA TOLA, BHIKHANPUR, P.S- ISHAKCHAK, DISTT.- BHAGALPUR.
6. ANIL KUMAR JHA S/O LATE SHREE KRISHNA JHA R/O MOHALLA-NAYA TOLA, BHIKHANPUR, P.S- ISHAKCHAK, DISTT.- BHAGALPUR.
7. ASHOK PRIYA JHA S/O LATE SHREE KRISHNA JHA R/O MOHALLA-NAYA TOLA, BHIKHANPUR, P.S- ISHAKCHAK, DISTT.- BHAGALPUR.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Swapnil Kumar Singh, Adv.
For the Respondent/s : Mr. S.C.7

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 20-02-2024

Heard learned Advocate for the petitioner as well as
learned APP for the State.



2. It is the case of the petitioner that the petitioner and private respondent nos. 5 to 7 are agnates. Indisputably, they jointly owned properties. Since the joint property was not amicably partitioned, two suits for partition being Title Partition Suit No. 14 of 2003 and Title Partition Suit No. 305 of 2003, between the parties are pending in the court of the learned Sub-Judge-VIII, Bhagalpur.

3. It is the case of the petitioner that during the pendency of the said Title Suits, the respondent nos. 5, 6 and 7 being added and abated by the respondent nos. 3 and 4, forcibly took possession of the petitioner's share by demolishing the boundary wall, constructed by the petitioner, around his share under his possession and erecting a new boundary wall with an iron gate covering the share of the petitioner.

4. The petitioner informed the matter to the Police authority for restoring his possession over the subject land, but Police authority did not take any action. Therefore, the petitioner is compelled to file the instant writ petition under Article 226 of the Constitution of India, praying for appropriate writ/direction upon the respondent authority for restoration of his possession.

5. The learned Advocate for the petitioner refers to Annexure-7 being certain photographs of a portion of wall with a



gate and outside the said gate two Police personnel were standing. Thus, it is contended on behalf of the petitioner that possession was taken by the private respondents with the help of the Police. It is also submitted by him that State authority is under obligation to protect the life and property of its citizen. When such protection is not available, the petitioner can seek appropriate relief under Article 226 of the Constitution of India.

6. Learned Advocate for the petitioner also refers to an unreported decision in Criminal Writ Jurisdiction Case No. 1571 of 2023, disposed of on 15th January, 2024, by a Coordinate Bench, wherein between the petitioners and the private respondents, a Title Suit for declaration and injunction was going on and petitioners made out a case that they were carrying their business on the premises in question, but the private respondents have taken local Police in collusion because of their political connection and influence and dispossessed the petitioners from the plots in question on 10th September, 2023. The petitioners lodged a complaint with Senior Superintendent of Police, Bhagalpur, the Director General of Police, Patna and the Chief Secretary, Bihar, copies of which were placed as Annexure-P/10, but the grievance of the petitioners is that the authorities did not look into the complaint of the petitioners.



7. Under such factual basis the Coordinate Bench directed the Director General of Police to enquire into the matter and submit a report. On the basis of the said report, the Writ Court directed demolition of boundary wall and restored possession of the said to the petitioner with a rider that such restoration of possession shall not be construed as any opinion of this Court on their rights, title and interest in the property. The Title Suit or any other legal proceeding between the parties, which are pending or may be instituted, shall be considered and decided by the Competent Court/Forum/Authority, as the case may be, in accordance with law.

8. On perusal of the above mentioned unreported decision, it is found that the petitioners filed a suit for declaration of their title over the dispute property and injunction.

9. In the instant case, admittedly a partition suit is pending between the parties. Pendency of Partition Suit between the parties establishes that the petitioner and respondent nos. 5, 6 and 7 are co-sharers, in respect of the joint property. The subject land is a part of the joint property. It is needless to say that so long a joint property is not partitioned, all co-sharers have right over every inch of property. Had it been the case of the petitioner that he is in possession in respect of a particular area in disassociation



of the respondents, his efficacious remedy lies by filing an application for prohibitory as well as mandatory injunction in the suit for partition itself. The State Authority cannot be used to protect the private rights of ownership of the parties. The right of the private parties on a disputed land, if the dispute is civil in nature, must be addressed to a civil court. The parties have already taken such steps.

10. In view of such circumstances, this Court is of the view that the instant writ petition is not maintainable.

11. Accordingly, the instant writ petition is dismissed.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

