

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.668 of 2017**

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1. Smt. Maya Shrivastava W/o Shri Krishna Chandra Shrivastava.
2. Krishna Chandra Shrivastava, S/o Late Jang Bahadur Lal, all are R/o Village Shitalpur, P.O. Langadpura, P.S. Mairawa, District Siwan at present r/o Muhalla Sastry Nagar, Hanumangadhi Mandir Road, P.O. Siwan, P.S. Siwan town, District Siwan.

... .. Petitioner/s

Versus

1. Arvind Kumar S/o Late Parama Nand Prasad.
2. Smt. Uma Shrivastava @ Usha Shrivastava, W/o Arvind Kumar, Both R/o at present Mairwa Dham, Paragana Chaubar, Anugrah Nagar, P.S. Mairawa, District Siwan.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Chandra Kant, Advocate<br>Mr. Ravi Bhushan Bharat, Advocate |
| For the Respondent/s | : | Mr. Udit Narayan Singh, Advocate<br>Mr. Rajiv Kumar, Advocate   |

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

**Date : 28-03-2024**

Heard learned senior counsel for the petitioners and learned counsel for the respondents and I intend to dispose of the present civil miscellaneous petition at the stage of admission itself.

2. The instant petition has been filed for setting aside last part of order dated 30.01.2017 contained in Annexure-1, passed by the learned A.D.J - IV, Siwan in Miscellaneous Appeal No. 2 of 2011 whereby and whereunder the learned Court has refused to pass order for demolition of structure made during pendency of appeal.



3. Learned counsel for the petitioners submits that the plaintiff filed Title Suit No. 450 of 2010 for adjudication of plaintiff's right, title and possession over the suit land and for declaration of his dispossession as illegal. The plaintiff purchased the suit land from one Ram Nath Prasad and the defendants purchased their land from the sons of Ram Nath Prasad. The defendants wanted to purchase the land of the plaintiff.

4. During the pendency of the suit, the plaintiff filed injunction petition and an order dated 07.07.2010 was passed granting *status quo*. The defendants appeared but did not file written statement and they filed their show cause in the injunction petition admitting the fact that he has raised construction and pillar has also been raised. After filing of the show cause a commissioner was appointed by the Court to get the status of the suit and Commissioner visited the suit land and submitted his report that six pillars have been raised up to 3-4 feet.

5. The learned Trial Court after hearing both the sides in the injunction petition, by a reasoned order dated 21.01.2011 allowed the injunction petition and restrained the defendants from making any construction over the suit property till disposal



of the suit.

6. Against the injunction order dated 21.01.2011 the defendant/respondents filed miscellaneous appeal bearing M.A. No. 2 of 2011. In the said miscellaneous appeal the petitioners filed a petition under Section 151 of the Code of Civil Procedure (in short 'the Code') submitting therein that during pendency of the appeal the appellant has raised construction up to roof level and hence construction raised should be demolished at the cost of the petitioner. The defendant filed rejoinder to the petition dated 11.04.2012 submitting that construction is two years old and he has not made any construction during pendency of the appeal. During course of argument, the petitioners submitted that there is no illegality in the order of the learned Court below, rather the appellate Court should take note of the subsequent event which happened during the pendency of the appeal. The learned appellate Court after considering the submissions, dismissed the appeal but has not passed any reasoned order with respect to demolition sought with regard to construction made by the defendant during the appeal.

7. Learned counsel further submits that the learned appellate Court ought to have considered the fact that when the



construction was made by the defendant during pendency of the appeal, then Court has power to pass order for demolition of the construction. Learned counsel further submits that the learned appellate Court has erred in not considering the subsequent event which happened during the pendency of the appeal and it is a case of non-exercise of judicial power and the learned appellate Court failed to exercise jurisdiction vested in it. Further, the learned appellate Court ought to have considered that when injunction order has been violated during pendency of the appeal then it is the appellate Court which has to pass order for demolition of structure.

8. Learned counsel further submits that if certain constructions were raised over the suit property violating the order of *status quo*, the learned Single Judge of this Court in ***Savitri Devi vs. Rajo Devi and another*** reported in **2006(3) PLJR 454** has held that if a party had knowingly and wilfully changed the status having received notice of injunction so as to frustrate and make the application for injunction infructuous without leave of the court that would surely amount to trying to over-reach the court and interfere in course of justice. If on enquiry it is found that construction was made after filing of injunction application then the court is obliged to restore status



quo as on the date of injunction notwithstanding that there was no status quo order by the court because if that is not done then the judicial process would be made infructuous. On this ground impugned order was set aside and the matter was remanded for reconsideration.

9. Learned counsel further referred to the decision of this Court in case of *Joynarain Sarogi vs. Brojendra Nath Misra* reported in *1951 AIR (Pat) 546* to stress the fact that if it came to the knowledge of the learned Court that some constructions were made, after defendant had become aware of the suit and injunction application, the said constructions must be brought down after grant of restraining order of temporary injunction. Learned counsel reiterated that during pendency of the appeal appellant has raised the construction up to roof level though it has come on record that only six pillars were erected prior to passing of the injunction order. It is a clear case of violation of the orders of the Court since it was done during the pendency of the miscellaneous appeal before the learned A.D.J-IV. The same should have been taken note by the learned A.D.J-IV and he should have conducted an enquiry and passed the orders for demolition of the structures erected subsequently to the passing of the orders of injunction.



10. Learned counsel appearing on behalf of the respondents submitted that there is no merit in the submissions of the learned counsel for the petitioners. Learned counsel further submits that the whole dispute is with regard to demarcation of boundary and if the boundary is clearly demarcated it will be found that there was no encroachment and no structure was raised on the disputed property. Learned counsel further submits that both the petitioner as well as defendants purchased the land from the same vendor from the same khata number and same plot number. Both the petitioners and respondents are in possession of 6 dhur of land only as the petitioner has sold 14 dhur land out of one kattha. The previous report of the pleader commissioner is silent on the point that the respondents have erected pillar or wall beyond the area of their 6 dhur land. It is also clear from the rejoinder filed by the respondents that they have already made the construction before the filing of the suit and passing of the *status quo* order. Learned counsel further submits that there is no violation of any order passed by the learned Trial Court. Learned counsel further submits that it is a case of wrong measurement of the land and if a qualified Amin is appointed everything will be cleared. Thus, learned counsel submits that there is no infirmity in the



impugned order and the same be sustained.

11. Having regard to the submissions made on behalf of the parties and on going through the records, it is apparent that the finding of prima facie case and balance of convenience in terms of the plaint has been recorded by the learned Trial Court while passing of the injunction order. It is apparent that there is concurrent finding about injunction granted in the case against the defendants/respondents which has been assailed in Civil Miscellaneous Jurisdiction Case No. 572 of 2017 and it was dismissed on 22.12.2013. Thereafter, the only issue which remains in the present petition is whether the learned 1<sup>st</sup> appellate Court was correct in its approach when it did not consider the issue of enquiry about violation of injunction order during the pendency of the miscellaneous appeal before it and left the same to be decided by the learned Trial Court. Whatever might be the contention of the parties with regard to operation of injunction order, if it has been brought to the notice of the appellate Court in miscellaneous appeal that certain constructions were raised while order of injunction has been in force and constructions were made during the pendency of the miscellaneous appeal, the appellate Court ought to have looked into the matter as it was obligatory upon it to pass a reasoned



order considering the points raised regarding subsequent construction. It was incumbent upon the learned Appellate Court to pass the order afresh considering all issues raised and thereafter dispose of the petition on merits.

12. Since there is no discussion on the point of enquiry over subsequent construction as alleged, I think the last part of the impugned order dated 30.01.2017 passed in Miscellaneous Appeal No. 2 of 2011 by the A.D.J - IV, Siwan is not sustainable and the matter is remanded to the learned appellate Court to decide the issue afresh so raised in the petition dated 11.04.2012 filed under Section 151 of the Code by the petitioner within a period of one month from the date of receipt of the order.

13. Accordingly, the instant petition stands allowed.

**(Arun Kumar Jha, J)**

Prakash/-

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