

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1022 of 2017**

Manoj Kumar Singh, son of Laxmi Kant Singh, resident of Village- Sondiha, P.S.- Pasraha, District- Khagaria, At Present- residing at Mauza- Sanhauli, Gaushala Road, P.S.- Chitragupta Nagar, District- Khagaria.

... .. Petitioner/s

Versus

1. Smt. Rukmini Devi, wife of Deepak Kumar Singh
2. Deepak Kumar Singh, son of Laxmi Kant Singh both are resident of Village- Sondiha, P.S.- Pasraha, District- Khagaria.
3. Murari Yadav
4. Satish Yadav,
5. Rohit Yadav, All Sons of Rajendra Yadav
6. Mosmat Manju Devi, wife of Late Vijay Yadav, All 3 to 6 are resident of Village P.O.- Deorhi, P.S.- Parbatta, District- Khagaria.
7. Laxmi Kant Singh, son of Late Sukhdeo Singh @ Sukheo Mandal, resident of Village- Sondiha, P.S.- Pasraha, District- Khagaria.
8. Ghanshyan Singh, son of Late Sukhdeo Singh @ Sukheo Mandal, resident of Village- Sondiha, P.S.- Pasraha, District- Khagaria.
9. Hirday Narayan Singh, son of Late Bipat Prasad Singh, resident of Village P.O.- Haripur, P.S.- Alauli, District- Khagaria.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Dronacharya, Sr. Advocate  
For the Respondent/s : Mr.

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

**Date : 12-01-2024**

Heard learned senior counsel for the petitioner on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed against the order dated 06.01.2017 passed by the learned District Judge, Khagaria in Civil Misc. Appeal No. 07 of 2015 by which the learned appellate court dismissed the appeal against the order dated 07.11.2015



passed by learned Sub-Judge, Gogri in Title Suit No. 97 of 2014 rejecting the prayer of the petitioner for grant of ad interim injunction under Order XXXIX rule 1 and 2 read with Section 151 of the CPC (hereinafter referred to as 'the CPC').

3. The facts of the case as it appears from the record is that the petitioner is plaintiff before the learned trial court and the appellant court and Title Suit No. 97 of 2014 was filed before the court of learned 1<sup>st</sup> Subordinate Judge, Khagaria with the prayer to declare void and non-effective the sale deeds dated 25.02.2010, 26.02.2010, 13.03.2010 and 26.03.2010 as executed by respondent no.7 in favour of respondent no.1 and the sale deed dated 22.01.2013 executed by respondent no.1 in favour of respondent 2<sup>nd</sup> set.

4. In the said suit, an injunction application was filed which was dismissed firstly by learned Sub-Judge, Gogri vide order dated 07.11.2015 and thereafter by the learned District Judge, Khagaria vide order dated 06.01.2017 passed in Civil Misc. Appeal No. 07 of 2015.

5. Learned senior counsel for the petitioner submits that the order of the learned courts below is not proper and against the facts of the case. The learned appellate court has not considered the fact that the order challenged before it was against on an application filed under Order XXXIX Rule 1 and 2 of CPC for



temporary injunction but while passing the impugned order, the appellate court has mentioned permanent injunction and dismissed the miscellaneous appeal. Further, the learned appellate court has made some observations which are certainly uncalled for. Learned senior counsel further submits that after going through the averments and written statement of defendant no.1 and defendant no.7, the plaintiff has been able to show a *prima facie* case in his favour and it goes without saying that irreparable loss would be caused to him, if the defendant sale out the property mentioned in the aforementioned sale deeds. Further, out of all the parties, balance of convenience is also in favour of the plaintiff/petitioner. On these grounds, learned senior counsel submits that the impugned order is not sustainable and same may set aside.

6. Perused the record.

7. From perusal of record, one striking aspect of the case is that though the plaintiff/petitioner has sought declaration regarding certain sale deeds, no declaration has been sought about title of this plaintiff/petitioner or his ownership or his possession. Merely seeking declaration against certain sale deeds would not make out a *prima facie* case in favour of the plaintiff/petitioner unless the plaintiff is able to show something with regard to his title or ownership on the property mentioned which are subject matter of the sale deeds. So there is no *prima facie* case in favour



of the plaintiff/petitioner. If there is no *prima facie* case, the plaintiff/petitioner would not have occasion to suffer in case the property is alienated or disposed of and for the aforesaid reasons, balance of convenience does not appear in favour of the plaintiff/petitioner.

8. In view of the discussion made hereinabove, I do not find any infirmity in the impugned order as the same has been passed after consideration of all the aspects of the matter and therefore, the same is affirmed.

9. Hence, I do not find any merit in the instant petition and, accordingly, the same is dismissed. However, it is made clear that any observation made while deciding the present petition or in the impugned order on merits of the case would not cause prejudice to the parties and the learned trial court would keep this observation always in mind.

**(Arun Kumar Jha, J)**

balmukund/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 16.01.2024 |
| Transmission Date | NA         |

