

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3235 of 2018

Smt. Saroj Devi wife of Ramavatar Prasad @ Ramavatar Kumar, Resident of Village- Ben, P.S.- Ben, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Land Reforms Department, Govt. of Bihar, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Nalanda at Bihar Sharif.
4. The Deputy Commissioner, Land Reforms, Rajgir, Nalanda.
5. The Circle Officer, Ben, Nalanda.
6. The Superintendent of Police, Nalanda at Bihar Sharif.
7. The S H O Ben Police Station, Nalanda.
8. Bindeshwar Mishtri, son of Dhupan Mishtri, present Resident of Village- Ben, P.S.- Ben, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Prasad, Adv.
For the Respondent/s : Mr. Saurabh Kumar, AC to I/C SC19

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 26-11-2024

In the instant petition, the petitioner has prayed for following reliefs:-

“ For issuance of a writ in the nature of Mandamous or any appropriate writ's, order's, direction's commanding the Respondents for following relief-

“I. For direction the Respondents to take legal action against the Private Respondent who is disturbing physical possession of the petitioner and forcibly taken physical possession over the petitioner's land which has been purchased by the registered sale deed from the sole land lord and Jamabandi has been created in the name of the petitioner pertaining to Tauzi No 9918, Thana 386, Plot No 485, Khata -74, Halka No 2 Anchal Ben area 9 decimal Parti.



II. For direction the respondents to take immediate appropriate steps for restraining the private respondents from physical possession over the said petitioner's land.

III. For other order or direction in favour of the petitioner in the interest of justice and ends of justice in the facts and circumstances of the case.”

2. Learned counsel for the petitioner submits that the petitioner has purchased a parti land pertaining to Tauzi No. 9918, Thana 386, Plot No.485, Katha-74, Halka No.2, situated at Ben area 9 decimal from Ramnandan Mistri through registered sale deed on 04.11.2011. He further submits that the petitioner came in possession over the land in question but after some time private respondent started constructing boundary wall over the land without having right, title and possession over the land in question. He further submits that he filed I.A. No.1 of 2024 in which he admitted that at the time of filing present case the petitioner had no knowledge that Title Suit No.149/2014 is pending before the competent court for final adjudication between the petitioner and private respondent.

3. Learned counsel for the State, through para 6 of the counter affidavit, has admitted the said fact.

4. It is admitted position that a Title Suit No.149/2014 is pending between the parties before the Civil Court with regard to the land in question.



5. The Hon'ble Supreme Court in catena of judgments, has held that regular suit is appropriate remedy for settlement of dispute relating to property rights between private persons. The remedy under Article 226 of the Constitution shall not be available except where there is violation of some statutory duty on the part of statutory authority is alleged. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. The jurisdiction under Article 226 of the Constitution being special and extraordinary and it should not be exercised casually or lightly on mere asking by the litigant. In this context, the decision of the Hon'ble Supreme Court in the case of ***Sohan Lal Vs. Union of Indian & Anr.*** reported in ***AIR 1957 SC 529*** and in the case of ***Radhey Shyam & Anr. Vs. Chhabi Nath and Ors***, reported in ***(2015) SCC 423*** are quite relevant.

5. In the case of ***Sohan Lal (supra)***, Hon'ble Supreme Court has observed as under :

“We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the



prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.”

6. In the case of **Radhey Shyam (supra)**, Hon’ble Supreme Court in paragraphs 64 and 65 has observed as under :

“64. However, this Court unfortunately discerns that of late there is growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in case of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed question of property are involved, writ courts are entertaining such



disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.”

7. In the light of the discussion made above, disputed aspect with respect to title over a land cannot be decided in writ jurisdiction. Accordingly, the present writ petition stands disposed of as not maintainable.

8. Pending, I.A. if any, stands disposed of.

(Alok Kumar Pandey, J)

amitkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28.11.2024
Transmission Date	N/A

