

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.387 of 2023**

Shyam Bihari Yadav @ Shyam Bihari Singh S/O Late Jomdhari Yadav
Resident of Village- Tiyar, Post and P.S- Tiyar, District- Bhojpur.

... .. Petitioner

Versus

1. Sri Ramniwas Singh @ Srinivas Singh S/O late Bikrama Singh Resident of Village- Aanar, Post and P.S.- Bihiya, District- Bhojpur.
2. Sri Bhagwan Yadav S/O Late Butan Ahir Resident of Village- Tiyar, Post and P.S.-Tiyar District- Bhojpur
3. Shivji Yadav S/O Late Butan Ahir Resident of Village- Tiyar, Post and P.S- Tiyar, District- Bhojpur.
4. Kalawati Devi W/O Rameshwar Prasad Singh Resident of Village- Dulhinganj, Post- Saneya Barhata, P.S.- Jagdishpur, District- Bhojpur.
5. Ramlal Yadav @ Nanhu Yadav S/O late Jomdhari Yadav Resident of Village - Tiyar, Post and P.S.- Tiyar, District - Bhojpur
6. Bishwanath Yadav @ Baban Yadav S/O Late Jomdhari yadav Resident of Village-Tiyar, Post and P.S- Tiyar, District- Bhojpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate
For the Respondent/s : Mr. Ashok Kumar, Advocate

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

Date : 16-07-2024

Heard the learned counsel for the petitioner as well as learned counsel for the respondents and I intend to dispose of the present petition at the stage of admission itself.

02. The instant petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 16.02.2023 passed by the learned Additional District Judge-VII, Bhojpur at Ara in Misc. Appeal No. 08 of 2022 and also against the order dated 20.01.2022 passed by



learned Sub-Judge, Jagdishpur, Bhojpur in Title Suit No. 194 of 2020. In Title Suit No. 194 of 2020, the learned Sub-Judge, Jagdishpur allowed the injunction petition dated 11.01.2021 filed by the plaintiff, the respondent-1st set herein, restraining the defendant-1st set from changing the nature of suit land in any manner and not to transfer or alienate the suit property. The petitioner, who is defendant-1st set, went into appeal by filing Misc. Appeal No. 08 of 2022, in which the aforesaid order dated 16.02.2023 has been passed by the learned Additional District Judge-VII, Bhojpur at Ara affirming the order of the learned trial court.

03. Briefly stated, the facts of the case are that the plaintiff/respondent-1st set filed Title Suit No. 194 of 2020 against the defendants for declaration that Schedule-I land was allotted in the share of the defendant/respondent no. 4 and she has right to sell it and also for partition of Schedule-II land of the suit property on the basis of the sale deed executed by defendant/respondent no. 4. According to the plaintiff, disputed *khata* was recorded in the name of Butan Ahir and Raghu Ahir, sons of Mitalu Ahir. After death of Raghu Ahir, there was separation in the branch of Butan Ahir and Raghu Ahir to the extent of half share each. In due course, the descendants of



Raghu Ahir sold the disputed land in favour of the plaintiff through registered sale deed dated 22.01.2019 and put him in possession. The defendants-2nd set are descendants of Butan Ahir and defendant-3rd set is the descendant of Raghu Ahir. The plaintiff further claims that Raghu Ahir has one daughter, namely Atwariya Kunwar and after her death, her only daughter, Kalawati Devi came into possession over the share allotted to the branch of Raghu Ahir and the said land has been sold in favour of the plaintiff. The plaintiff further claims that the branch of Butan Ahir gave their share of land to one Jomdhari Yadav for cultivation. In the month of November, 2019, the sons of late Jomdhari Yadav stopped the plaintiff from cultivating the land claiming that they have purchased entire 56 decimals of land through registered sale deed from Butan Ahir. Thereafter, proceedings under Sections 144 and 145 Cr.P.C. were initiated at the instance of the plaintiff, which were dropped holding that there was a title dispute. It is further claim of the plaintiff that Butan Ahir was having right over only 28 decimal of land in disputed *khata* and he could have sold only to the extent of 28 decimal of land of his share. The defendants-4th set are the sons of Jomdhari Yadav and are purchasers from Butan Ahir.

04. The defendant nos. 1, 2 and 3 appeared and filed



their joint written statement wherein they claimed that one Mitalu Yadav had two sons, namely Butan Ahir and Raghu Ahir, Raghu Ahir died issue-less 50 years back and in this manner, Butan Ahir came into possession over the entire property left by his father. Subsequently, he sold entire 56 decimals of land of *khata No. 215, khesra No. 2214* in favour of Jomdhari Yadav (father of defendant nos. 1 to 3) through registered sale deed dated 05.09.1994 and put him in possession as well. Defendant nos. 1 to 3 were having land adjacent to their purchased land bearing Plot No. 118, area 35 decimals and they amalgamated their purchased land with their own land and put cemented pillars and wires. They also installed boring and planted trees. They got the land mutated in their favour and started paying rent to the State of Bihar. The defendant first set also claimed that plaintiff has been playing fraud and he has set up Kalawati Devi as heir of deceased Raghu Ahir and got a sale deed executed from said Kalawati Devi on 22.01.2019. In this regard, a *Panchayati* was also held in which decision has been taken that the plaintiff would take steps for cancellation of his deed and would realize the compensation from Kalawati Devi and would not disturb the previous purchasers.

05. During the pendency of the suit, the plaintiff



/respondent-1st set filed an application dated 11.10.2021 under Order 39 Rule 1 and 2 r/w Section 151 of the Code of Civil Procedure, 1908, seeking injunction. Rejoinder to the application was filed and thereafter, the learned trial court vide order dated 28.01.2022 allowed the petition and granted injunction against the petitioner/defendant-1st set. The said order got affirmed by the learned Additional District Judge-VII, Bhojpur at Ara in Misc. Appeal No. 08 of 2022. These two orders have been challenged before this Court.

06. Learned counsel for the petitioner submits that the learned courts below have not considered the facts of the case and have not correctly applied the law and has thus passed erroneous orders. The orders passed by the learned subordinate courts are without appreciation of the facts. A number of documents were brought on record on behalf of defendant-1st set which show the possession of the defendant-1st set over the land and these documents include the document of mutation and rent receipts in favour of defendant-1st set. The plaintiff has lost the case before the Revenue courts and also in proceedings under Sections 144 and 145 Cr.P.C. The appeal, challenging the mutation in favour of the defendant-1st set, was also rejected. Learned counsel further submits that though the plaintiff claims



title over the suit land but he has not taken any pain to challenge the sale deed executed in favour of the defendant-1st set way back in the year 1994. The defendant-1st set is in possession and has got a document showing better title compared to the plaintiff. There was no *prima facie* case in favour of the plaintiff. Similarly, the learned courts below did not consider this fact and did not even consider the balance of convenience factor and passed orders without discussing and without recording a finding over the ingredients of triple test, i.e., '*prima facie* case', 'balance of convenience' and 'irreparable loss'. Hence, the orders impugned are not sustainable and the same be set aside.

07. Learned counsel appearing on behalf of respondent-1st set vehemently contends that all the three ingredients of triple test are in favour of the plaintiff and the learned courts below considered all the facts and passed the orders, which could not be assailed. Learned counsel further submits that, moreover, the orders passed by the learned courts below were for protection of the suit property and it is in the interest of the parties that suit property be protected till the disposal of the case. Learned counsel further submits that the plaintiff is vendee from descendant of one of the brothers,



namely Raghu Ahir and plaintiff claims only 28 decimal of land which was the share of Raghu Ahir. The plaintiff has brought on record a genealogical table showing that Kalawati Devi was maternal granddaughter of Raghu Ahir. From this lady, the plaintiff claimed title over 28 decimal of land which he purchased through a registered sale-deed. If the property is alienated or transferred or its nature is changed, the plaintiff would suffer irreparable loss and balance of convenience would be disturbed as the plaintiff claims to be in possession of the said land. Learned counsel further submits that the learned trial court has also observed that the suit would be disposed of expeditiously, if the defendant-1st set is restrained from transferring the land by executing any sale-deed or by changing its nature. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same is required to be sustained.

08. Having regard to the rival submissions in the background of facts and circumstances of the case, the issue before this Court is whether the orders of the learned subordinate courts could be sustained, so far as grant of injunction is concerned.

09. The orders of the learned subordinate courts leave



much to desire. There is no discussion of '*prima facie* case', neither of 'balance of convenience' nor of 'irreparable loss'. When the defendant-1st set has his claim over the suit land through a registered sale-deed of the year 1994, which remained unchallenged even by the defendants-2nd and 3rd set for so many years, it shows a *prima facie* case of transfer by a registered document conferring a right to the defendant-1st set over the suit land. Thereafter, the factor which ought to have been taken into consideration by the learned subordinate courts was the revenue records of the suit land which also shows the possession of the defendant-1st set. Once possession has been found in favour of the defendant-1st set as possession of the defendant-1st set has even been accepted by the learned courts below, no *prima facie* would remain in favour of the plaintiff. If no *prima facie* could be found in favour of the plaintiff, there was no further requirement of going into the issue of 'balance of convenience' or 'irreparable loss'. Moreover, the order of the learned trial court shows it was more concerned with the disposal of the suit while passing the order, but its reasoning is flawed as it stated that the same was possible only if there is injunction against the defendant-1st set. I am unable to understand this logic. The learned trial court has further



observed that people don't understand the importance of pendency of cases and use to arbitrarily sell the land and deliberately delay the disposal of the suit. Every case has its own facts and circumstances and making such general and sweeping observation was certainly uncalled for. So far as the claim of the learned counsel for the respondent-1st set about protection of the property is concerned, it is also not evident from the impugned orders since only the defendant-1st has been restrained and it was not a *status quo* order against all the parties.

10. Even the appellate court missed these points and instead of discussing the facts and applying the law in proper perspective it passed the order in most casual manner. In paragraph-7, the learned appellate court has mentioned that learned AGP for the State opposed the appeal but the State is not even the party in the case before it. This fact bore out from the cause and title of the Misc. Appeal No. 08 of 2022. Further, in paragraph-8 of its order, the learned appellate court recorded a finding contrary to its observation as it recorded that it found no *prima facie* case in favour of the plaintiff. The order of the appellate court does not show application of judicial mind at any stage. Therefore, I am of the considered opinion that the



impugned orders are completely perverse and could not be sustained.

11. In the light of aforesaid discussion, I find and hold that the orders passed by the learned courts below are not sustainable. Hence, the order dated 16.02.2023 passed by the learned Additional District Judge-VII, Bhojpur at Ara in Misc. Appeal No. 08 of 2022 and the order dated 20.01.2022 passed by learned Sub-Judge, Jagdishpur, Bhojpur in Title Suit No. 194 of 2020 are set aside. Accordingly, the present Civil Misc. petition stands allowed.

12. However, this Court has not expressed any opinion on the merits of the case in any manner and whatever has been observed, is only for the purpose of disposal of the present petition and the learned trial court will not be prejudiced by any of the observations made by this Court.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.07.2024
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