

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.312 of 2022**

---

1. Madan Yadav @ Madan Prasad Yadav S/o Late Billo Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
2. Janardan Yadav S/o Late Billo Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
3. Rajesh Yadav S/o Late Billo Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
4. Bablu Kumar Yadav S/o Late Mahangi Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.

... .. Petitioner/s

Versus

1. Bimal Yadav S/o Late Mathura Gope R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
2. Baiju Yadav S/o Late Mathura Gope R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
3. Naraiyan Yadav S/o Uman Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
4. Shiv Muni Paswan S/o Jagdeo Paswan R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
5. Bhaso Devi W/o Late Billo Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
6. Rudwa Devi W/o Late Mahangi Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
7. Langra Yadav S/o Late Mahangi Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
8. Sarita Devi D/o Late Mahangi Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
9. Nanki Devi D/o Late Mahangi Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
10. Talo Devi D/o Late Billo Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
11. Sabia Devi D/o Late Billo Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.
12. Bhothi Devi D/o Late Billo Yadav R/o Village- Barmasia, P.O. and P.S.- Jhajha, District- Jamui.

... .. Respondent/s

---

**Appearance :**

|                                        |   |                                                                        |
|----------------------------------------|---|------------------------------------------------------------------------|
| For the Petitioner/s                   | : | Mr. Shashi Shekhar Dvivedi, Sr. Advocate<br>Mr. Parth Gaurav, Advocate |
| For the Respondent 1 <sup>st</sup> Set | : | Mr. Prabhat Ranjan Singh, Advocate                                     |

---

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**  
**Date : 02-07-2024**

Heard learned senior counsel for the petitioners and learned counsel for the respondent 1<sup>st</sup> set and I intend to dispose of the petition at the stage of admission itself.

2. The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 11.02.2022 passed by the learned Additional District Judge III, Jamui in Civil Misc. Appeal No. 01 of 2020 affirming the order dated 14.01.2020 passed by learned Sub Judge IV, Jamui in Title Suit No. 86 of 2010 and also the order dated 14.01.2020 passed by learned Sub Judge IV, Jamui in Title Suit No. 86 of 2010 wherein the learned Subordinate Judge has directed the parties to maintain status quo over the disputed land on the application dated 14.10.2019 filed by plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure (hereinafter “the Code”).

3. The Title Suit No. 86 of 2010 was filed by plaintiff/respondent 1<sup>st</sup> set in the Court of learned Sub-Judge I, Jamui for cancellation of sale deeds dated 03.02.1951, 21.11.1958 & 21.02.1975, respectively and further holding the sale deeds to be illegal and invalid. The plaintiffs further claimed that the defendants did not get any title over the disputed land on the basis of the sale deeds. Plaintiffs finally

prayed for confirmation of their possession over the disputed land and also prayed for recovery of possessions if they were found to be dispossessed. Defendants appeared and filed their written submission. During the pendency of the suit, an application dated 14.10.2019 has been filed on behalf of the plaintiffs under Order XXXIX Rule 1 and 2 of the Code and the learned Subordinate Judge *vide* order dated 14.01.2020 allowed the same and directed the parties to maintain status quo over the disputed land. The order of the learned trial court was affirmed by the learned Additional District Judge III, Jamui *vide* order dated 11.02.2022. Both the orders are under challenge before this Court.

4. Learned senior counsel Mr. S. S. Dvivedi, appearing on behalf of the defendants/petitioners, submits that the suit has been filed in the year 2010 for declaring the sale deeds which were executed from 1951 till 1975 illegal and void and for setting aside the sale deeds. The plaintiffs filed an application for injunction for the first time in the year 2015 which was rejected *vide* order dated 06.10.2015. Thereafter another application was filed with the same prayer in the year 2017 which again came to be rejected *vide* order dated 07.02.2017. Thereafter, with some minor changes the third

application has been filed which has been allowed by both the courts. The learned senior counsel further submits that the impugned orders are completely perverse as they have been passed without considering the provisions of law in this regard and are even against the existing facts. The petitioners/defendants have been coming into possession since the execution of sale deeds and have made a number of constructions and enjoying their property for a very long period. So the *prima facie* case has always been in favour of the petitioners/defendants and hence in favour of the respondents/plaintiffs, the learned trial court considered all the facts while rejecting the injunction applications filed earlier by the plaintiffs. But this time the learned subordinate courts did not consider that no *prima facie* case was in favour of the plaintiffs nor any balance of convenience nor the plaintiffs were likely to suffer any irreparable loss. The learned court below did not record any finding about the fact whether the plaintiff have got any *prima facie* case or any balance of convenience was in their favour. Without recording its opinion on these points, the learned trial court as well as learned appellate court went on to restrain both the parties and ordered them to maintain *status quo* with regard to the suit property. The learned courts below did

not even take into consideration the fact that earlier rejection of the injunction application would operate as *res judicata* as no new facts have been brought on record and learned senior counsel referred to the decision of the Hon'ble Supreme Court reported in case of ***Satyadhan Ghosal & Ors. Vs. Smt. Deorajin Debi & Anr.*** reported in ***AIR 1960 SC 941*** wherein the Supreme Court held that *res judicata* operates at different stages of the same proceeding. This decision was further relied recently at para 11 in the case of ***Surjit Singh & Ors. Vs. Gurwant Kaur & Ors.*** reported in ***2014(4) PLJR 323 (SC)***. Mr. Dvivedi fairly submitted that if there is any subsequent development which would require moving fresh application for injunction, same could always be considered by the Court but in that case the plaintiffs were required to mention about their previous applications and thereafter the fresh ground or subsequent development to allow them to move the present injunction application. Referring to the injunction application dated 14.10.2019, Mr. Dvivedi submitted that perusal of the application shows clear suppression of the fact of dismissal of the previous two injunction petition on the same set of facts. This amounts to suppression of material facts and playing fraud with the Court. Mr. Dvivedi referred to paras 7 & 8 in the case

of *S.P. Chengalvaraya Naidu Vs. Jagannath* reported in *AIR 1994 SC 853* wherein the Hon'ble Supreme Court held that the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Court further held that a litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the court as well as on the opposite party. Learned senior counsel further stressed that there is presumption of correctness of registered documents and the sale deeds of the defendants are registered documents and the plaintiffs, without disclosing the fact about their source of knowledge, have filed the present suit before the learned trial court much beyond the period of limitation wherein they claim about getting the knowledge in the year 2009. But in subsequent injunction application they have mentioned the year as 2010. Both the averments are on affidavit and both could not be correct. Hence, the plaintiffs should be taken to task for making wrong submission on oath before the learned trial court. Summing up his arguments, Mr. Dvivedi submitted that the learned courts below did not

consider the 'triple test' as required under the law and relief of *status quo* is equivalent to grant of injunction and before granting such relief, the courts have to consider the presence of *prima facie* case, balance of convenience and irreparable injury/loss likely to be caused to the plaintiffs, a duty in which both the courts failed. Under these circumstances, the impugned orders are not sustainable and the same are required to be set aside.

5. Learned counsel appearing on behalf of the plaintiffs opposes the submission made on behalf of the defendants. Learned counsel for the plaintiffs submits that the defendants have brought the fact about getting the knowledge about the sale deeds in the year 2009 and 2010 in a proceeding before the revenue court and accordingly, the averments have been made in the injunction applications. Learned counsel further submits that the petitioners/defendants claimed that the ancestor of the plaintiffs, Bhatu Gope, died issueless but this is a wrong averment and whole case of the defendants is based on the said averment. If the plaintiffs are claiming through Bhatu Gope, they have a right over the suit property and thus have a *prima facie* case and have rightly brought the suit for setting aside the illegal sale deeds. Learned counsel further submits that

as the defendants tried to construct permanent structure over the suit land, the plaintiffs were compelled to approach the learned trial court for restraining the defendants though their earlier injunction petitions have been rejected. Learned counsel further submits that if the order of *status quo* is maintained by the parties no prejudice will be caused to either of the parties. The evidence of the defendants is being recorded and there is every chance that suit would be disposed of in near future. So no prejudice would come to any of the parties if *status quo* is maintained till the disposal of the suit.

6. I have given my thoughtful consideration to the rival submission of the parties in the light of facts and circumstances of the case. The law regarding the grant of temporary injunction and interlocutory orders is covered by Order 39 of the Code. However, before grant of a temporary injunction, the Court must be satisfied with a person seeking an injunction has a *prima facie* case in his favour and that the balance of convenience and irreparable injury also likely in his favour. The Hon'ble Supreme Court in the case of ***Gujarat Bottling Co. Ltd. & Ors. vs The Coca Cola Co. & Ors.*** reported in (1995) 5 SCC 545 held that "The grant of an interlocutory injunction during the pendency of legal proceedings is a matter

requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a *prima facie* case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.” The orders of the learned subordinate courts leave much to desire. Firstly, there is no discussion of three tests, *i.e.*, *prima facie* case, balance of convenience and irreparable loss on the facts of the case before the learned courts below. If it is the admitted case of the plaintiffs that the defendants are in possession, there could be no *prima facie* case in favour of the plaintiffs. If the defendants are having their buildings and other constructions over the suit property and have been enjoying the same, if any injunction is granted, naturally the order would be disturbing the balance of convenience lying in favour of the defendants. But in no case these two factors would be in favour of the plaintiffs. Another aspect which the learned subordinate courts did not take into account was the earlier rejection of the injunction petitions. On this account the plaintiffs are apparently at fault. When the plaintiffs moved before the learned trial court with their application seeking injunction, they were required to

specifically mention about their earlier petitions filed for injunction and also the fact about rejection of their prayer. The plaintiffs suppressed this fact and it tantamounts to playing fraud upon the Court. The learned subordinate courts were supposed to take this factor into account before passing the impugned orders.

7. Another issue which has been raised by the learned senior counsel appearing on behalf of the petitioner is that there would be applicability of *res judicata*, since petitions filed earlier for injunction have been rejected. Subsequent developments could, of course, be taken care of but when the plaintiffs did not mention about the earlier filing of the injunction applications, it is but natural that they would not have mentioned about the subsequent development. So whatever has been mentioned before the learned trial court it would be purportedly considered as raising the issue for the first time. But then the plaintiffs could not claim that they were bringing only the subsequent development on record and thus seeking injunction on the ground of such development. This is because of the fact that the plaintiffs have failed in their duty to bring to the notice of the courts about previous finding on the injunction applications which were rejected *vide* detailed orders. If the said

fact was not brought to the notice of the learned subordinate courts, the plaintiffs cannot claim benefit of any subsequent event since they have brought the injunction application as a fresh petition for reasons best known to them. Due to concealment of facts the decision relied by the learned senior counsel in the case of ***Satyadhan Ghosal(Supra)*** becomes relevant.

8. The Hon'ble Supreme Court in the case of ***Prakash Harishchandra Muranjan Vs. Mumbai Metropolitan Region Development Authority And Another*** reported in ***(2009) 3 SCC 432*** has held that when prayer for injunction is concurrently refused by two courts, the Supreme Court, in a proceeding under Article 136 of the Constitution of India, would be very slow and cautious before it can take a different view. The Court further observed that it can only do so, if it finds that the judgment of the Court below is perverse. Though there is concurrent findings of two subordinate courts but in the light of discussion made hereinbefore, I think the orders could not be sustained as the same have been passed ignoring the established principles of law. In the lights of these facts and circumstances, the order dated 11.02.2022 passed by learned Additional District Judge III, Jamui and order dated 14.01.2020 passed by learned Sub

Judge IV, Jamui are set aside and accordingly the instant petition stands allowed.

9. The Court has not made any observation on the merits of the case and since it is a suit of 2010, the learned trial court is directed to take up the matter urgently and dispose of the same within six months from the date of receipt/production of the copy of the order.

**(Arun Kumar Jha, J)**

anuradha/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | N/A        |
| Uploading Date    | 09.07.2024 |
| Transmission Date | N/A        |