

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.496 of 2023

Resham Devi, Wife of Satyendra Prasad Gupta, Resident of Village-
Ramdasha, Police Station- Mohanpur, District- Gaya, at present residing at
Village- Bara Guraru, Police Station- Guraru, District- Gaya.

... .. Petitioner/s

Versus

1. Gupta Prasad Agrawal, S/o- Late Lakhan Lal, R/o Village- Bara Guraru,
P.S.- Guraru, P.O.- Guraru, District- Gaya.
2. Arjun Prasad Aggrawal, Son of Late Lakhan Shao, Resident of Baake Bazar,
Police Station- Guraru, District- Gaya.
3. Dev Lal Yadav, Son of Late Ramdev Prasad Yadav, Resident of Village-
Bara Guraru, Police Station Guraru, District- Gaya.

... .. Respondent/s

Appearance :

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

For the Respondent/s : Mr. Nagendra Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 22-07-2024

Heard learned counsel for the petitioner as well as
learned counsel for the respondent no.3.

2. The instant petition has been filed by the
plaintiff/petitioner under Article 227 of the Constitution of India
for quashing the order dated 21.01.2023 passed by the learned
Sub-Judge-5, Gaya in Title Suit No. 150 of 2016 whereby and
whereunder the application filed under Section 151 of the Code
of Civil procedure (hereinafter referred to as 'the Code') has
been rejected.

3. Briefly stated, the facts of the case are that the
petitioner is the plaintiff in the title suit and defendant
no.1/respondent no.1 was the owner of the suit property.



Defendant no.1/respondent no. 1 executed a registered conditional sale deed dated 07.07.2009 in favour of the plaintiff/petitioner reserving right to repurchase the same on the same consideration within five years i.e., till 06.07.2014. As the defendant no.1/respondent no.1 do not repurchase the suit property till 06.07.2014, the plaintiff/petitioner became absolute owner. The plaintiff/petitioner constructed two rooms and one shop over the suit land and the plaintiff/petitioner and her husband started residing in the said rooms and the husband of the plaintiff/petitioner started doing business from the shop. When the title of the plaintiff/petitioner was denied by defendant no.1/respondent no.1 then the plaintiff/petitioner filed Title Suit No. 150 of 2016 for declaration of right and title over the suit property. Meanwhile, defendant no.1/respondent no.1 sold the suit property to defendant no.2/respondent no.2 vide registered sale deed dated 06.01.2015 and defendant no.2/respondent no.2 further sold the suit property to defendant no.3/respondent no. 3 vide registered sale deed dated 15.09.2016. All the three defendants have been made respondent nos. 1, 2 and 3, respectively. Defendant nos.2 and 3/respondent nos. 2 and 3 appeared and filed their written statement in his title suit stating therein that the aforesaid registered conditional sale deed dated



07.07.2014 was actually a usufructuary mortgage deed and the defendant no.3/respondent no.3 was ready to make the payment of mortgage amount of Rs. 1,30,000/-. The plaintiff/petitioner filed an injunction application before the learned trial court which was heard and allowed vide order dated 08.09.2016 and the defendants/respondents were restrained from alienating the property in any manner and not to disturb the possession of the plaintiff/petitioner. It has been further submitted by the plaintiff/petitioner that defendant no.3/respondent no. 3 and his son forcibly dispossessed the plaintiff/petitioner from the suit property by illegal means, beaten the plaintiff/petitioner and her husband and dispossessed her from the suit property by forcibly vacating the same and looted the shop of the plaintiff/petitioner and took away several mobile sets, cash and ornaments from the suit premises. A petition was submitted on 08.12.2020 before the Senior Superintendent of Police, Gaya but no action was taken. The plaintiff/petitioner also filed a miscellaneous case before the learned trial court for violation of order dated 08.09.2016 but no order has been passed on the said petition. Thereafter, the plaintiff/petitioner filed another petition under Section 151 of the Code on 23.12.2020 for immediate restoration of possession over the suit property. The defendants/respondents were given



opportunity for filing rejoinder and after hearing the parties, the learned trial court rejected the petition filed by the plaintiff/petitioner vide order dated 21.01.2023 which is under challenge before this Court.

4. Learned counsel for the plaintiff/petitioner submits that the order of the learned trial court is not sustainable as the same has been passed without consideration of facts and circumstances and the law applicable. It has been passed even without consideration of its own order dated 08.09.2016 by the court. Learned counsel further submits that while rejecting the petition, learned trial court has taken only fact in consideration that the petition was filed under Section 151 of the Code and the same could not be invoked if alternative remedies exist and also on the ground that plaintiff has not sought relief as recovery of possession in the suit. Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. & Anr.***, reported in ***(1996) 4 SCC 622*** wherein the Hon'ble Supreme Court held that where an act is done in violation of an order of stay for injunction, it is the duty of the court, as a policy, to set the wrong right and not allow the perpetuation of the wrong doing. The inherent power of the Court, it was held, is



not only available in such a case but it is bound to exercise it to undo the wrong in the interest of justice. The said action was necessary to prevent the abuse of process of law. Learned counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***All Bengal Excise Licensees' Association vs. Reghabendra Singh & Anr.***, reported in ***(2007) 11 SCC 374 : AIR 2007 SC 1386*** wherein the Hon'ble Supreme Court held that courts have held in a *catena* of decisions that where in violation of the restraining order or an injunction order against a party something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. The Hon'ble Supreme Court further held that the inherent power will not only be available under Section 151 of the Code in such a case but is wrong not to exercise in that manner in the interest of justice and in the public interest. It has further been held that as a matter of judicial policy, the Court should guard itself against being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the courts' orders. Learned counsel further submits that the learned trial court did not take into consideration all these facts and passed the order which could not be sustained and the same needs be



set aside.

5. Learned counsel appearing on behalf of the defendant no.3/respondent no.3 vehemently contends that the impugned order is sustainable and has been passed after consideration of all the facts and law applicable in the matter. Learned counsel further submits that defendant no.3/respondent no.3 purchased the land from defendant no.2/respondent no.2 who was not having any knowledge of injunction as the order dated 08.09.2016 as there is mere mentioning of the fact that defendant no.2/respondent no. 2 refused to accept the notice but there has been no declaration that he has been validly served. Learned counsel further submits that there has been no amendment in the plaint regarding dispossession and recovery of possession. Even the sale deeds of defendant nos.2 and 3/respondent nos. 2 and 3 have not been challenged in the original plaint even after coming to know about the sale by defendant no.1/respondent no.1. Learned counsel further submits that the learned trial court rightly held that there could be no application of Section 151 of the Code in such circumstances when alternative remedies are available to the plaintiff/petitioner. Learned counsel further submits that, moreover, the land came into possession of the defendant



no.3/respondent no.3 after execution of sale deed by defendant no.2/respondent no.2 and even the plaintiff/petitioner has not mentioned any date for her dispossession from the suit property. Learned counsel further submits that husband of the plaintiff/petitioner took Rs. 70,000/- from defendant no.2/respondent no.2 and thereafter the respondents made numerous attempt to make payment of rest amount of Rs. 1,30,000/- and despite efforts by the respondents the plaintiff/petitioner did not receive money. On the other hand notice was required to be given by the plaintiff/petitioner if the money was not returned within the stipulated period and for making repayment. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same needs to be sustained.

6. I have given my thoughtful consideration to the rival submission of the parties and has also perused the record minutely. The plaintiff/petitioner claims right over the suit property by way of registered conditional sale deed dated 07.07.2009 by operation of which she also claims possession. This fact is though disputed by the respondent nos. 2 and 3 who are defendant nos. 2 and 3 who filed their written statements by claiming that it is not a document of conditional sale but a



document of usufructuary mortgage. But the said aspect of the matter would be decided only after full trial and for the present purpose both the documents, whether it is a document for conditional sale or usufructuary mortgage, the effect of these documents is that the possession will pass to the person from whom the consideration flows and in the present case the said person is the plaintiff/petitioner. There is no denial that the said document has not been acted upon and remained on paper. Rather the execution is admitted. Whatever be the claim of defendant no.3/respondent no.3 about coming into possession over the suit property from the date of execution of sale deed, the same does not appear to be believable because there is no other document to show the possession as claimed by defendant no.3/respondent no.3.

7. Much stress has been put on the fact that there has been no date of dispossession. However, by way of supplementary affidavit, certain documents have been brought on record by the plaintiff/petitioner and one such document is copy of Guraru P.S. Case No. 138 of 2020 wherein the date of occurrence is mentioned as 07.12.2020. Therefore, not mentioning the date of dispossession is not much material. So far as the claim of the respondents is that defendant



no.2/respondent no.2 was not the party on the relevant date when order dated 08.09.2016 has been passed, the court has mentioned the fact that defendant no.2/respondent no.2 refused to accept the notice which means in no uncertain terms that the defendant no.2/respondent no.2 was having knowledge. It has further been admitted by the learned counsel for the defendant no.3/respondent no.3 that defendant nos.1 and 2/respondent nos. 1 and 2 are own brothers and this is also a relevant fact to be taken into consideration for imputing knowledge to defendant no.2/respondent no.2 who filed his written statement on 04.01.2017. In the case of *Savitri Devi vs. Rajo Devi & Anr.*, reported in **2006 (3) PLJR 454**, the learned Single Judge of this Court has held that if a party had knowingly and willfully 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 to 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. Even in the



written statement, the defendant no.2/respondent no.2 has admitted that the plaintiff/petitioner has permissive possession over the suit property though he has asserted right and title over the suit property at the same time admitting that usufructuary mortgage has still been subsisting till 06.07.2024 and denied that any cause of action arose on 01.08.2014 because defendant no.1/respondent no.1 never denied the title of the plaintiff/petitioner on the suit property. The submission made in the written statement clinches the issue in favour of the plaintiff/petitioner since the defendant no.2/respondent no.2 is the vendor of defendant no.3/respondent no.3 and any right which could flow to defendant no.3/respondent no.3 could only through defendant no.2/respondent no.2.

8. So far as submission made on behalf of defendant no.3/respondent no.3 about the plaintiff/petitioner not making any claim against sale deed or not seeking recovery of possession in the plaint by way of amendment is concerned, the same is with regard to the assertion of rights by the plaintiff/petitioner and its enforcement and the same cannot be made a ground to deny the plaintiff's/petitioner's existing right which she has come to acquire through admitted document, conditional sale deed/usufructuary mortgage deed. Moreover, the



stage has not been crossed yet like moving appropriate application and the same would not give any right to any person to violate the orders of the court.

9. To maintain rule of law it is necessary that every persons should obey the directions of the court and never dare to violate the same otherwise it would result in chaos in the society. It has been rightly submitted by the learned counsel for the plaintiff/petitioner that there could be no ground of not availing alternative remedy for denying the plaintiff's/petitioner's relief by the learned trial court. The inherent power of the court is always available in such cases and ought to be exercised to undo the wrong. The Hon'ble Supreme Court has time and again held that when things come to such a pass and outright wrongs are committed violating the orders of the Court, the Courts are duty bound to set right such wrongs.

Reference could also be made to the Full Bench decision of the Madras High Court in the case of ***Century Flour Mills Ltd. vs. S. Suppiah and Ors.***, reported in ***AIR 1975 Madras 270*** and paragraph no.8 of this judgment reads as under:-

“8. In our opinion, the inherent powers of this court under Section 151 C.P.C. are wide and are not subject to any limitation. Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of



the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders. But in this case it is not necessary to go to that extent as we hold that the power is available under Section 151. C.P.C.”

The Calcutta High Court decision in the case of ***Sujit Pal Vs. Prabir Kumar Sun & Ors.***, reported in ***AIR 1986 Cal 220*** could also be referred on the aforesaid provision of law wherein the following observation has been made in paragraph nos. 12 & 13, which read as under:-

*“12. The view which we take finds support from a decision of the Rajasthan High Court in *Magna v. Rustam*, AIR 1963 Raj 3. In that case, it has been observed that though O. 39, R. 2(3) of the Code is exhaustive on the subject of imposing of penalty on the party guilty of disobedience, it does not provide any relief to the party in whose favour the order of temporary injunction is passed. Further, it has been observed that the object of such an order is to safeguard the rights of a party against a threatened invasion by the other party, and that if in disobedience of the order of injunction such rights are invaded during the pendency of the suit, relief can only be granted to the aggrieved party by invoking the inherent power of the*



Court under S. 151 of the Civil P.C.

13. In Hari Nandan v. S.N. Pandita, AIR 1975 All 48, the Allahabad High Court has taken the same view as we have, namely, that when a party has been dispossessed in disobedience of the order of injunction, the Court can in exercise of its inherent power pass such order for ends of justice as would undo the wrong done to the aggrieved party."

Reliance could be placed on the decision of the Hon'ble Supreme Court in the case of ***Delhi Development Authority*** (supra) and paragraph nos. 18, 19 and 20 read as under:-

"18. The above principle has been applied even in the case of violation of orders of injunction issued by Civil Courts. In Clarke v. Chadburn [1985 (1) All.E.R. 211], Sir Robert Megarry V-C observed:

"I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some change in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach of law. If a meeting is held in breach of an injunction, it cannot be said that the meeting



has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

19. *To the same effect are the decisions of the Madras and Calcutta High Courts in Century Flour Mills Limited v. S. Suppiah & Ors. [A.I.R.1975 Madras 270] and Sujit Pal v. Prabir Kumar Sun [A.I.R.1986 Calcutta 220]. In Century Flour Mill Limited, it was held by a Full Bench of the Madras High Court that where an act is done in violation of an order of stay or injunction, it is the duty of the Court, as a policy, to set the wrong right and not allow the perpetuation of the wrong-doing. The inherent power of the Court, it was held, is not only available in such a case, but it is bound to be exercise it to undo the wrong in the interest of justice. That was a case where a meeting was held contrary to an order of injunction. The Court refused to recognize that the holding of the meeting is a legal one. It put back the parties in the same position as they stood immediately prior to the service of the interim order.*

20. *In Suraj Pal, a Division Bench of the Calcutta High Court has taken the same view. There, the defendant forcibly dispossessed the plaintiff in violation of the order of injunction and took possession of the property. The Court directed the restoration of possession to the plaintiff with the aid of police. The Court observed that no technicality can prevent the Court from doing justice in exercise of its inherent powers. It held that the object of Rule 2-A of Order 39 will be fulfilled only where such mandatory direction is given for restoration of possession to the aggrieved party. This was necessary, it observed, to prevent the abuse of process of law."*

Reference could also be made to the decision of the



Hon'ble Supreme Court in the case of ***Sushil Kumar Dey Biswas & Anr. vs. Anil Kumar Dey Biswas & Anr.***, reported in ***(2015) 3 SCC 461***. In the said case the respondent/plaintiff dispossessed the appellant/defendant from premises, though it was admitted that the defendant was having possession of certain portion of the suit property and the application under Section 151 of the Code was filed for restoration of possession, which was rejected by the learned appellate court as well as High Court. But the Hon'ble Supreme Court allowed the appeal and directed the respondent/plaintiff to restore the possession of the appellant/defendant. Further, in similar circumstances, in the case of ***Meera Chauhan vs. Harsh Bishnoi***, reported in ***(2007) 12 SCC 201***, the Hon'ble Supreme Court held that an application under Section 151 of the Code can be entertained in the given facts of the case and the power under Section 151 of the Code to pass order of injunction in the form of restoration of possession is no more *res intergra*.

10. In the light of settled law as discussed hereinbefore, I have no hesitation in holding that the impugned order dated 21.01.2023 passed by learned Sub-Judge-5, Gaya in Title Suit No. 150 of 2016 could not be sustained and hence, the same is set aside and the petition dated 23.12.2020 filed by the



plaintiff/petitioner is allowed.

11. The learned trial court is directed to ensure that the possession is restored to the plaintiff/petitioner with the help of police, if so required. The Senior Superintendent of Police, Gaya is directed to ensure all cooperation towards the compliance of the orders of this Court.

12. With the aforesaid observations and directions, the present civil miscellaneous petition stands allowed.

13. Pending interlocutory application(s), if any, shall stand disposed of.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.07.2024
Transmission Date	NA

